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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 73

H. J. HEINZ COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the Circuit Court of Appeals for the Sixth Circuit (R. 1140–1152) is reported at 110 F. (2d) 843. The findings of fact, conclusions of law, and order of the Board (R. 197–229) are reported at 10 N. L. R. B. 963.

JURISDICTION

The decree of the Circuit Court of Appeals (R. 1140) was entered on April 3, 1940. The petition for a writ of certiorari was filed on May 9, 1940, and granted on June 3, 1940 (R. 1152). The juris-

diction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and upon Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether there is substantial evidence to support the Board's findings that petitioner

(a) interfered with its employees in the exercise of their organizational rights, in violation of Section 8 (1) of the National Labor Relations Act;

(b) dominated, interfered with, and contributed support to the Heinz Employees Association, in violation of Section 8 (2) of the Act;

(c) refused to bargain collectively in good faith with Canning and Pickle Workers, Local Union No. 325, in violation of Section 8 (5) of the Act.

2. Whether, under the circumstances of this case, the Board validly found that petitioner's refusal to embody terms agreed upon by it and the Union in a signed agreement, constituted a refusal to bargain collectively in violation of Section 8 (5) of the Act.

3. If not, whether the Board acted within its discretion in issuing an order, on the basis of petitioner's refusal to bargain in other respects, directing petitioner to embody terms that may be agreed upon as a result of future collective bargaining between it and the Union in a signed agreement, if the Union so requests.

4. Whether, even though petitioner (following an election) recognized the Union, and did not recognize the Association, as the exclusive bargaining representative, the Board acted within its discretion in issuing an order directing petitioner to withdraw all recognition from, and completely to disestablish, the Association as a representative of any of petitioner's employees for purposes of collective bargaining.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set out in Appendix F, *infra*, pp. 84–87.

STATEMENT

Upon proceedings had pursuant to Section 10 of the National Labor Relations Act,[1] the Board is-

[1] These were: a charge (R. 3–4) and amended charge (R. 4–5) filed by the Canning & Pickle Workers, Local Union No. 325, affiliated with the A. F. of L. (herein called the Union); complaint and notice of hearing (R. 5–9), a copy of which was served on the Heinz Employees' Association (herein called the Association), a labor organization alleged in the complaint to be dominated by petitioner (R. 9–10, 8); answer by petitioner (R. 11–17); hearing before the trial examiner; order transferring the proceeding before the Board (R. 87–88); findings and order issued by the Board (R. 88–114); a notice to show cause why said findings and order should not be vacated (R. 116); order setting aside the findings and order (R. 118–119); order directing issuance of proposed findings of fact, proposed conclusions of law, and proposed order (R. 120–121); proposed findings of fact, proposed conclusions of law and a proposed order issued by the Board (R. 121–147), exceptions thereto by petitioner (R. 148–192); and oral argument before the Board by counsel for petitioner and counsel for the Union (R. 192, 194–195, 196).

sued its findings of fact, conclusions of law and order (R. 197–229).

The Board's findings of fact with respect to the unfair labor practices are detailed under Point I of the Argument (*infra*, pp. 17–47). In brief outline, the Board found that the H. J. Heinz Company, herein called the petitioner, through its plant superintendent, foremen, and other supervisory employees, interfered with, restrained, and coerced the employees in the exercise of their right to join the Union, in violation of Section 8 (1) of the Act (R. 203–205); that various of petitioner's foremen and group leaders solicited employees to join the Association, organized to compete with the Union (R. 205–210); that petitioner dominated and interfered with the formation and administration of the Association and contributed support to that organization, in violation of Section 8 (2) and (1) of the Act (R. 212); that despite such practices, and despite petitioner's recognition of the Association as the exclusive representative of its employees, the Union was selected over the Association by a majority of the employees in an election conducted by the Board (R. 201–203); and that the Union thereby became the exclusive representative of all the employees in a concededly appropriate collective bargaining unit (R. 212–213).

The Board also found that, after negotiating with the Union for some two weeks on the basis of a written form of collective agreement, without

objecting to such form, petitioner suddenly informed the Union that it did not intend to enter into any signed agreement with the Union and insisted upon this "policy" over the Union's violent objections (R. 215–216); that historically, under the "practice and procedure of collective bargaining," the "collective agreement has normally taken the form of a written contract * * * signed by the parties" (R. 220); that "petitioner's refusal to accept the full procedure of collective bargaining in this case" arose from its desire "to deny to the Union the status and prestige to which it was entitled as the recognized party to a collective agreement" and "to impress its employees with the benefits of membership in the Association and to convince them that no benefits had been gained by virtue of membership in the Union" (R. 221–222); that petitioner's refusal to sign an agreement with the Union deprived the Union of advantages highly important to a bargaining agency (R. 222); that the Union never abandoned its demand or its desire for a signed agreement according full recognition to the Union as the collective bargaining representative of the employees (R. 224); and that petitioner's refusal to embody any agreed terms in a signed agreement between it and the Union, under the circumstances, constituted a refusal to bargain in violation of Section 8 (5) of the Act (R. 220–224).

The Board found that, in addition to its refusal to enter into a signed agreement, petitioner likewise failed to bargain collectively in good faith, in violation of Section 8 (5) and (1), in that it withheld from the Union the status and recognition of an equal during the negotiations, repudiated and changed the terms of an understanding reached and approved as final, on its behalf, by negotiators whom it represented to have full authority, adopted dilatory tactics although informed that they were harmful to the Union, and refused, without reason, to permit a memorandum posted on its bulletin boards to describe the procedure for adjusting grievances which it had accepted during the negotiations (R. 214–225).

The Board's order (R. 228–229) requires petitioner to cease and desist from the unfair labor practices found and, as affirmative action designed to effectuate the policies of the Act, (a) to withdraw all recognition from the Association as the representative of any of petitioner's employees for purposes of collective bargaining and completely to disestablish the Association as such representative; (b) to bargain collectively with the Union as the exclusive representative of the employees and, if an understanding is reached concerning rates of pay, wages, hours or other conditions of employment, to embody such understanding in a written, signed agreement, if requested to do so by the Union; and (c) to post appropriate notices.

Thereafter, petitioner filed in the Circuit Court of Appeals for the Sixth Circuit a petition to review and set aside the Board's order. The Board answered, praying that its order be enforced against petitioner. On April 3, 1940, the Circuit Court of Appeals rendered its decision (R. 1140–1152) and entered a decree (R. 1140) directing that the Board's order be enforced in full.

SUMMARY OF ARGUMENT

I

The Board's findings of fact as to the unfair labor practices, concurred in by the court below, afford "no occasion here to review the evidence in detail." *National Licorice Co.* v. *National Labor Relations Board,* 309 U. S. 350, 357–358. A brief summary will suffice.

1. (a) When the Union first sought to organize the petitioner's employees in April 1937, petitioner's ~~employees for purposes of collective bargain~~ supervisors engaged in widespread interference with and coercion of the employees in the exercise of their organizational rights. The superintendent of the entire plant, Heinrich, upbraided employees for attending Union meetings and warned that "the A. F. of L. is no good". Various foremen cast aspersions on the Union leadership and membership, used the threat of discharge to support the thesis that "you cut your own throat" by joining, and advised that the Employer would shut the plant rather than recognize the Union.

(b) The Association, formed by employees led by one of petitioner's group leaders, was actively aided by petitioner's supervisory staff. Brooks, in charge of the entire spaghetti building, assembled 40 employees during working hours, attacked the A. F. of L., and urged his listeners to form an unaffiliated organization. Brooks recruited one Armstrong to solicit signatures to Association petitions during working hours without loss of pay. Subsequently, Brooks suggested to Armstrong the names of other employees whose aid would "help you get the names faster." Hayes, regarded as the assistant superintendent, directed a campaign by various foremen to enroll the employees in the Association. The foremen actively participated in the Association's campaign, on occasion utilizing threats against the employees' jobs to obtain signatures. Various group leaders spent a good deal of their working hours soliciting for the Association; and Association solicitors roamed throughout the plant, openly in the presence of the foremen, who took no steps to stop this use of petitioner's time.

2. The Board's findings as to the activities of petitioner's supervisory staff, even without reference to the group leaders, are clear warrant for the Board's order since petitioner "may fairly be said to be responsible" for such interference with its employees in the exercise of their organizational rights. *International Association of Machinists etc.* v. *National Labor Relations Board,* No. 16, this

Term, decided November 12, 1940. All of petitioner's foremen, whether in charge of entire departments or particular production operations, have authority to "recommend" hire and discharge as well as wage increases. They "did exercise general authority over the employees and were in a strategic position to translate to their subordinates the policies and desires of the management" and the employees had just cause to believe, as they did, that such supervisors "were acting for and on behalf of the management." *Machinists* case, *supra*. Petitioner "took no effective means to stop repeated violations of the Act" during a period when widespread intimidation and solicitation were taking place in its plant and producing the effects which the Act seeks to prevent. Nor did petitioner voluntarily undertake to dissipate those effects. Its instructions to the supervisors were far from a repudiation of their activities; on the contrary, they were confined to the supervisors themselves. Petitioner took no action "to communicate its alleged neutrality to the employees" or to inform them that the supervisor's efforts were not exerted on behalf of the management and would be resisted and corrected by the management.

The group leaders, too, are members of the supervisory staff, with directive and disciplinary power over the other employees, including the recommendation of discharge. They were regarded by the employees as representatives of the

management. The Board was therefore justified in its conclusion that the Employer was likewise responsible for their coercive activities.

3. Petitioner, during negotiations with the Union, refused to embody agreed terms in a signed agreement with the Union on the sole ground that to do so was against its "policy." The Union protested vigorously that petitioner's unexplained refusal to sign any agreement violated the Act; but since the only choice appeared to be to accept as a substitute a unilateral statement or to call a strike, the Union agreed to aid in drafting a memorandum of the terms already agreed upon by all parties. Petitioner, despite the fact that it had represented that its negotiators had full authority to act for it, repudiated the memorandum thus drawn and interposed a long, unexplained, delay even though informed that the Association was circulating rumors that petitioner would never reach any agreement with the Union. Petitioner through its president, Heinz, "revised" the memorandum in such a way as to omit the name of the Union from the first paragraph, to eliminate the statement that "the Company recognizes and will deal with * * * [the Union] as the exclusive bargaining agency for the employees" and substitute therefor the statement that any group of employees could present grievances. It also struck out all mention of the grievance machinery to which, admittedly, it had no objection. Evasive

and conflicting reasons were offered for its refusal to name the Union as the representative which negotiated the unilateral statement; none of these reasons had prevented petitioner from stating in its "agreement" with the Association, prior to the election which the Union won, that "we have recognized the Heinz Employees Association as the collective bargaining agent for our employees", or from naming the members of the Association's committee. Its reasons for omitting to mention the grievance machinery were patently empty. The Board found that petitioner did not "accept the full procedure of collective bargaining" because of its desire "to deny to the Union the status and prestige to which it was entitled as the recognized party to a collective agreement" and thus "to impress its employees with the benefits of membership in the Association and to convince them that no benefits had been gained by virtue of membership in the Union."

II

This Court has recognized that the "manifest objective in providing for collective bargaining" was "the making of contracts with labor organizations" and that "the purpose of the statute was to compel employers to bargain collectively with their employees to the end that employment contracts binding on both parties should be made." *Consolidated Edison Co.* v. *National Labor Relations*

Board, 305 U. S. 197, 236; *National Labor Relations Board* v. *Sands Mfg. Co.*, 306 U. S. 332, 342.

It is the position of the Government that one aspect of this obligation to bargain collectively under normal circumstances is the embodiment of agreed terms in a signed trade agreement to which the employer and the authorized representative of the employees are parties. The support for our position is found in several circumstances bearing directly upon the intention reasonably to be attributed to Congress at the time the Act was passed.

The "practice and procedure of collective bargaining," given legal sanction by the Act, had developed through the course of years and, in 1935, had well-defined attributes made familiar through exhaustive studies by governmental agencies and students of labor relations and economics. It was a matter of uniform and authoritative definition that "collective bargaining" included a willingness and obligation to enter into a signed trade agreement if terms acceptable to both parties were reached. It was generally known that employers who announced a "policy" against signed agreements with labor unions were motivated by a desire to prevent effective organization of their plants or to weaken or destroy a representative already selected. The substitute offered, when any was, usually consisted of unilateral bulletin board statements of policy, similar to that offered by petitioner here, which

were recognized as not the product of genuine collective bargaining.

Congress, moreover, had before it and relied upon the considerable administrative practice under prior legislation likewise designed to protect and enforce the rights of employees to self-organization and collective bargaining. Under that practice, the duty to bargain collectively uniformly included an obligation to embody agreed terms in a signed trade agreement. Any Congressional intention to depart from these administrative precedents, by lessening the content of the duty to bargain collectively, is expressly negatived by the legislative history of the present Act. The reenactment of the phrase "bargain collectively" constitutes, under the circumstances, an approval and adoption of the preceding administrative practical interpretation.

Finally, it is to be observed, informed opinion in the field is uniformly to the effect that it is "through the trade agreement * * * that collective bargaining becomes an agency of industrial order." Such agreements are uniformly thought of as a code whereby the rule of "law, democratically made by employees as well as employers, has been substituted for the rule of economic force and warfare" in industrial relations. This situation may well be contrasted with that existing under a unilateral statement of policy. There, neither the union nor the employer accepts the

responsibility of abiding by the "terms" of such a statement. The union is at a serious disadvantage in retaining members; its energies are dissipated in a continuing struggle to obtain recognition; it is beset by insecurity. The history of numerous industries attests to the fact that where the trade agreement prevails, stoppages due to strikes and other forms of friction are notably infrequent. This normal final step in the "practice and procedure of collective bargaining" constitutes, as a matter of fact, the most effective means whereby collective bargaining accomplishes the purposes of the Act. Giving effect to the foregoing considerations, the Circuit Courts of Appeals for the First, Second, Fourth, Eighth, and Tenth Circuits, as well as the court below, have held that an employer's refusal to embody agreed terms in a written trade agreement constitutes a refusal to bargain collectively in violation of the Act.

The Board's order, moreover, would be valid in any event. The evidence fully supports the Board's finding that, regardless of whether Section 8 (5) imposes a duty to embody agreed terms in a signed agreement, petitioner's refusal of such an agreement in this case rested upon its desire to disparage the Union as an appropriate representative of the employees by denying it a recognized status as such representative. Petitioner's stand on the signed contract question, when viewed in the light of its course of conduct, plainly is shown to be

merely one phase of its efforts to avoid genuine collective bargaining. The provision of the order in question here is "adapted to the situation which calls for redress." *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 348.

The claim, contrary to the finding of the Board, of a technical acquiescence by the Union in petitioner's refusal to sign an agreement, is equally insubstantial as a basis for challenging the validity of the order. Upon this record, there is little room for a supposition that in future bargaining petitioner would consent to a signed agreement even if the Union insisted that it discharge that obligation. The reasonable anticipation that petitioner will impose a block to the realization of the objectives sought through the collective bargaining procedure, warrants a preventative order. Orders identical with the provision here under discussion have been enforced by the Circuit Courts of Appeals for the Fourth and Ninth Circuits, expressly without reference to whether the employer violated the Act by refusing to embody terms in a signed agreement.

III

The Board's order that petitioner withdraw all recognition from, and disestablish, the Association as the representative of any of its employees is plainly valid. Petitioners continue to recognize the Association as a potential representative of employees, qualified under Sections 9 (a) and 8

(5) to demand recognition as the exclusive representative, if designated by a majority, of the employees. Petitioner's refusal to name the Union as the representative which negotiated the bulletin board "agreement" was defended on the ground that such action might impair the Association's efforts to achieve majority designation and exclusive recognition. Its reasons for refusing a signed agreement plainly had roots in the same soil. The members of the Association have continued to meet and pay dues, and, at the time of the hearing, regarded the Association as a labor organization qualified to represent employees. And the Association, during petitioner's negotiations with the Union, sought to weaken the Union's position as the employees' representative by circulating rumors "that the company never intended to come to any agreement" with the Union. Finally, in its brief in this Court, petitioner discloses that it still regards reassurance of its employees—by informing them that the coercive activities of its supervisors, aiding the Association and obstructing the Union, were not condoned and not welcomed by the management—as none of its concern. The employees certainly have ample grounds for believing that petitioner's relations with the Association have merely been suspended. The Board was therefore warranted in finding that it was necessary for petitioner to announce unequivocally that its candidate was permanently outside the field of selection.

ARGUMENT

I

THE BOARD'S FINDINGS OF FACT CONCERNING THE UNFAIR LABOR PRACTICES ARE SUPPORTED BY THE EVIDENCE

The Board's findings of fact as to the unfair labor practices, concurred in by the court below, afford "no occasion here to review the evidence in detail." *National Licorice Co.* v. *National Labor Relations Board,* 309 U. S. 350, 357–358; *International Association of Machinists etc.* v. *National Labor Relations Board,* No. 16, this Term, decided November 12, 1940.[2] A brief summary of the evidence will suffice to show that the findings are amply supported.

1. (a) *Interference, restraint, and coercion in violation of Section 8 (1).*—When the Union first sought to organize petitioner's employees in April 1937 (R. 253), Heinrich, the superintendent of the

[2] Accord: *Cincinnati, etc., Ry. Co.* v. *Interstate Commerce Commission,* 206 U. S. 142, 154; *Illinois Central, etc., Railroad* v. *Interstate Commerce Commission,* 206 U. S. 441, 456. See, also, *General Pictures Co.* v. *Electric Co.,* 304 U. S. 175, 178; *United States* v. *Chemical Foundation,* 272 U. S. 1, 14; *Virginian Railway Co.* v. *System Federation No. 40,* 300 U. S. 515, 542. Petitioner pays lip service to the principle that the validity of the Board's findings on conflicting evidence will not be inquired into here (Br. 59). But petitioner's extensive reliance upon evidence rejected by the Board, and its almost complete disregard of the evidence upon which the Board's findings are based, indicates that petitioner still contends that the findings are unsupported because "the Board did not believe its witnesses" (R. 1146).

entire plant (R. 691, 260, 1064), appealed to the "loyalty" of various employees, upbraided them for attending Union meetings, warned that the Union did not have jobs to dispense, and advised that "the A. F. of L. is no good" (R. 272, 327–328, 394, 399–402, 422–423, 450, 457–458, 511, 772–775).[8] Hayes, one of three general foremen working throughout the plant directly under the superintendent (R. 695, 729, 871), and regarded by the employees as the assistant superintendent (R. 259, 306, 313, 333–334, 456, 756), characterized the Union leadership as "alien," stated that the president of the local was being paid by the "head" for each member signed up, and urged the employees to tell Union organizers to "go to hell" (R. 310, 451, 458–459, 872–873, 880–881). Locke, who was in charge of the entire bean building with power to recommend discharge (R. 738, 776, 514), referred to Union members as "bolsheviks," threatened that they would be "sorry," and used the threat of discharge to support his thesis that "you cut your own throat" by joining (R. 515, 529, 534, 542, 783–785). Vajentic, who had some 40 employees in the bean baking department under his supervision (R. 736, 505, 509, 524, 526, 537), told some of them that petitioner would discharge all of the employees and

[8] Petitioner relies upon Heinrich's testimony that, in each of the instances referred to, he approached the employee in question concerning other subjects but the employee immediately accused Heinrich of "picking on" him because of his Union membership (R. 702, 707, 710, 712).

shut the plant rather than recognize the Union; Vajentic also repeatedly interrogated employees concerning the Union and told the Croatian employees under him that unionization would result in loss of insurance and Social Security benefits (R. 510–511, 528–529, 532–534; see also R. 261). Brooks, who was in charge of the entire spaghetti building (R. 755, 315), called a meeting of 25 or 30 girls and told them that if the Union, a "money-making scheme," organized the plant, their work would not be as steady as theretofore; Brooks also questioned various employees concerning their sympathies (R. 351–352, 359; 315–317, 326, 330).

These activities plainly were not of a "casual, isolated nature" (Br. 9). The evidence establishes widespread similar activities on the part of other foremen and foreladies in charge of large groups of employees (R. 351, 352–353, 359, 365, 370–371, 373, 447, 449, 470–471, 499–500, 794, 863; see R. 753).

(b) *Interference with, and support of the Association in violation of Section 8 (2) and (1).*—The Association was formed by five employees led by Bennett, a group leader (note 19, p. 31, *infra*) who thereafter became its president; their motivation consisted of dislike for the A. F. of L. rather than a desire to bargain collectively (R. 723, 727, 901, 917–922, 981, 985–988, 990, 992–994, 995, 997–1000, 1002–1004). The supervisory staff thereupon set out to assure the Association's success. Brooks (*supra,* this page), during working hours, assem-

bled some 40 employees in his department, attacked the A. F. of L., and urged his listeners to form an unaffiliated organization (R. 315–316). Brooks recruited Armstrong, an employee with anti-union predilections, to solicit signatures to Association petitions during working hours without loss of pay, assuring Armstrong that use of company time for this purpose was all right (R. 316–320, 322–323, 325); two other foremen confirmed to Armstrong Brooks' view that Association activity during working hours was unobjectionable (R. 319, 320). Subsequently, Brooks complained to Armstrong that "the names aren't coming in fast enough" and suggested other employees whose aid would "help you get the names faster" (R. 320–321).[4] There is testimony, which the Board credited, as it might, that Hayes (*supra*, p. 18) directed a campaign by various foremen, including Foreman Palivoda, to enroll the employees in the Association (R. 556–557, 792–793). Hayes also threatened one employee with discharge unless he signed the Association petition and boasted to another that "we have 1,300 signatures" (R. 310, 483–484; see R. 873, 875). Other foremen actively participated in the Association's campaign, on occasion utilizing threats against the employees' jobs to obtain signatures.[5] A number of employees testified that

[4] Neither Brooks nor the other two foremen, Mozeyka and Kearns, testified at the hearing.

[5] Foreman Locke (R. 80–81, 526–528, 530–531, 547, 551, 554–555, 776–781, 786–788, 790, 832, 837–838); Foreman Vajentic

they signed the petitions only because of the fear of discrimination aroused by the foremen and other supervisors (R. 295–296, 358, 405–406, 408, 414, 416, 421, 425, 426, 431, 435, 438, 444–445, 493–494, 506, 517, 536, 542).[6] Group leaders Gerhard, Bennett, Sipple, Paul, Greenier, and Murphy (n. 19, pp. 31–32, *infra*) apparently spent a good deal of their working hours soliciting for the Association (R. 292, 294; 297–298, 301, 311–312, 472, 488–489; 366–367; 375–376, 379–380, 394, 889, 894–896; 447–449, 471, 850, 854; 492, 493, 496–498; 723, 727, 724, 738, 721, 725, 802–803). Association solicitors roamed throughout the plant (R. 299, 320, 329, 335–336, 341–342, 346–349, 353–354, 359–361, 371, 410–413, 418–419, 428, 431, 432, 434, 436, 438–439, 444, 472–473, 491, 503, 539, 540–541, 549, 813–815, 836, 839–840).[6] The solicitation went on openly in the presence of the foremen, who took no steps to stop the use of petitioner's time in this way or to return the solicitors to their places of work (R. 338, 347,

(R. 505–508, 512–513, 524, 537); Foreman Marzolf (R. 404, 408, 409, 413, 897); Forelady Schirer (R. 403–406); Foreman Bruns (R. 356); Forelady Topnick (R. 364–366); Forelady Gazzo (R. 418–421, 425, 427, 430, 434, 436, 818, 825); Foreman Kropf (R. 440–442, 855); Foreman Schultz (R. 479–480, 855–856); Foreman John White (R. 545–547); Foreman Dave White (R. 548–549, 843); Forelady Griebel (R. 548, 550).

[6] Compare petitioner's statement (Br. 75) that there is "no proof" that the activities of the supervisors had "any possible coercive effect."

355, 360–361, 410–413, 535, 539, 541, 795, 839–840). Forelady Griebel interpreted Heinrich's "neutrality" instructions (*infra*, pp. 29–31) as forbidding the supervisors to interfere with Association solicitation (R. 831). Hargraves, a "personnel man" for petitioner (R. 210, 258, 280, 759, 460, 561), who attended foremen's meetings (R. 760) and apparently had power to recommend discharge (R. 280, 759, 560, 561), announced with evident pleasure that an unaffiliated union organized by the Association's attorney had won over the A. F. of L. in an election at a neighboring plant and "I don't see why the Heinz Company could not do it" (R. 459–460, 469). Hargraves also identified the Union organizers as "Croatian Communists" who were "getting their orders from Moscow" (R. 558). It is apparent that these activities on behalf of the Association far exceeded in intensity and extent the "promotion efforts" held to sustain the Board's findings in *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 250, 262.[7] See *National Labor Relations Board* v. *Falk Corp.*, 308 U. S. 453, 460–461.

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[7] The present case involves the additional factor of actual participation of group leaders (N. 19, pp. 31–32, *infra*) in the organization of the Association. Bennett was the Association's principal organizer (*supra*, p. 19), presided at the first two meetings (R. 265, 302–303, 335, 345, 473, 933–934) and served as the only president the organization had prior to the hearing (R. 901, 940). Sipple was secretary of the Association, a departmental representative, and a member of the Association's bargaining committee which negotiated an

A majority of the employees eventually signed Association petitions (R. 44, 931, 942). When both the Union and the Association requested recognition as the employees' representative, petitioner proposed an election between them, but the Union would not agree to appear on a ballot with what it regarded as a company-sponsored rival (R. 245, 248, 256, 564, 565, 906, 948, 1032, 1035, 1036, 1039–1040, 1069–1070). Compare *National Labor Relations Board* v. *Falk Corp.*, 308 U. S. 453. A strike by the Union for recognition closed the plant; petitioner then recognized the Association as the employees' exclusive representative, entered into an "agreement" with that organization, and mailed a copy to each employee (R. 44–48, 249, 911, 943–944, 953–957, 1005–1006, 1044–1046, 1097).

2. *Petitioner is responsible for the activities of its superintendent, department heads, foremen, and group leaders.*—Petitioner contends that the Board's findings[8] as to the activities of its super-

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agreement with petitioner (R. 46, 911, 940, 951–952, 1017–1019). Hargraves, the "personnel man" (*supra*, p. 22), and Group Leaders Capan and Greenier attended Association meetings, while Group Leaders Hiebner, Lager, and Bergaski (see R. 722, 725, 742) signed Association petitions (R. 265–266, 340–341, 344, 376–377, 473, 908–909).

[8] Petitioner does not contend that the evidence does not support the Board's findings. But its statement that "this is not a case where the employer has indulged in actual or threatened discrimination" (Br. 58, 89–90), which has no record basis, must be the result of ignoring the evidence summarized above (pp. 17–22, *supra*).

visory staff, during working hours, do not warrant an order against it in the absence of proof that such activities were authorized or ratified by petitioner (Pet. Br. 54–90).[9] This aspect of the case is controlled by the decision of this Court in *International Association of Machinists etc.* v. *National Labor Relations Board,* No. 16, this Term, decided November 12, 1940.

Concededly (Pet. Br. 56–57), no portion of the Board's order turns solely upon the propriety of its finding (R. 206–207) that petitioner is responsible for the activities of its group leaders.[10] At this point, therefore, the activities of the plant superintendent, department heads, and foremen[11]

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[9] Petitioner also intimates, without arguing the point, that the First Amendment to the Constitution guaranteed to the supervisors a right to engage in these coercive activities (Br. 85–88, 60, 62, 72). This question was neither raised in the court below nor in the petition for certiorari. See *Crown Cork Co.* v. *Gutmann Co.*, 304 U. S. 159, 161. Compare *Elkland Leather Co., Inc.* v. *National Labor Relations Board*, No. 496, this Term, certiorari denied November 18, 1940.

[10] The Board stated that "our conclusions with respect to the respondent's relationship to the Association are not predicated upon the actions of group leaders alone. There is evidence in the record of illegal activities by employees whose supervisory capacity is not denied" (R. 207).

[11] Superintendent Heinrich testified that the management recognizes no such classification as "assistant foreman" (R. 724; see R. 798, 800). Petitioner, nevertheless, refers to such a classification (Br. 56, 58). We are unable to discover which of the persons whose activities are here in question (~~*supra*, pp.~~ N. 12, p. 25, *infra*) are placed in this category by petitioner's counsel.

are assumed to afford sufficient basis for the order of the Board provided only that petitioner may be held responsible for them.

The generic term "foreman" is used in petitioner's plant to designate persons who have charge of entire departments, or even entire plant buildings, as well as persons in control of employees engaged in a particular production operation.[12] It is admitted (Pet. Br. 56, 71) that all of these per-

[12] Locke was in charge of the entire bean building (R. 738, 776, 514); Brooks was in charge of the entire spaghetti building (R. 755, 315, 351–352); Braun was in charge of the entire branch-house stock department (R. 862, 866); Hayes supervised production throughout the plant directly under Superintendent Heinrich, discharging functions whose nature caused him to be known as the "assistant superintendent" (R. 259, 306, 313, 333–334, 456, 695, 729, 756, 871); Vajentic was head of the bean baking department, a subdivision of Locke's domain, with some 40 employees under him (R. 735–736, 738, 776, 505, 509, 524, 526, 537); Marzolf was in charge of the entire preserve department (R. 404, 409, 413); Forelady Schirer was in charge of the labeling and wrapping division of the preserve department, with 22 employees under her (R. 403–404); Bruns was head of the spaghetti filling department, in which some 40 girls worked (R. 350); Palivoda was in charge of the entire bottling department with 212 employees under him (R. 365, 795, 798); Topnick was one of three foreladies in charge of the girls engaged in bottling pickles (R. 365); Forelady Gazzo was in charge of the fifth floor of the cereal department with 16 girls working under her (R. 418, 817); Krup was head of the distillery department (R. 440, 719–720); Schultz was foreman of the painters (R. 479), John White of the employees engaged in cleaning beans (R. 545–546, 808), Dave White of the employees engaged in packing beans (R. 548, 842), and Griebel was forelady in the same department with 21 girls under her (R. 548, 831).

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sons have authority to "recommend" hire and discharge (R. 761–762), and the record establishes the potency of this power.[13] They can also recommend wage increases (R. 870–871). It is plain that they are not "merely minor supervisory employees" (Pet. Br. 59), except by comparison with petitioner's executives, who are not "supervisory employees" at all.[14]

This Court in the *Machinists* case held that the determinative question, as to the validity of the Board's order, was whether the evidence supported the Board's conclusions that the employees' choice had in fact been interfered with and that "the employer may fairly be said to be responsible" for

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[13] Superintendent Heinrich testified that Foreman Krup (or Kropf) "on several occasions said 'I have to get rid of that man. He doesn't do what I tell him to do.' And that particular day he called me up and he said, 'I am going to fire Lukitsch'" (R. 719–720). An employee named Pavlakovich, upon asking Heinrich for a transfer to another department, was told that unless he could obtain the approval of the "foreman of the department," Heinrich could not help him (R. 717). Many of Foreman Vajentic's men had been hired "through his [Vajentic's] efforts" (R. 735; see R. 761). An employee testified that Hargraves was a foreman at the time of the hearing and that his "word is as good as Mr. Heinrich's to fire anybody" (R. 280). Another testified that all hiring and firing is done through the personnel department but that "each foreman is entitled to fire, if they see fit" (R. 313).

[14] The record contains no reference to any "supervisory employees" higher in rank than the department heads and foremen, with the single exception of Superintendent Heinrich.

such interference.[15] In the case at hand, petitioner cannot well deny that the coercive weight of the activities engaged in by its superintendent, department heads, and foremen, derived from the authority—petitioner's authority—which they exercised over the other employees. Here, just as in the *Machinists* case, the supervisors "did exercise general authority over the employees and were in a strategic position to translate to their subordinates the policies and desires of the management" and "the employees would have just cause to believe" that such supervisors "were acting for and on behalf of the management." Petitioner's contention (Br. 70–85) that, in addition, "authorization" or "ratification" is essential, cannot withstand analysis.[16] It would,

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[15] The Court noted that the problem did not turn on "technical concepts pertinent to an employer's legal responsibility to third persons for acts of his servants" and cited with approval *Consumers Power Co.* v. *National Labor Relations Board*, 113 F. (2d) 38, 44, where the Circuit Court of Appeals for the Sixth Circuit stated that acts of coercion accomplished through supervisory employees justified an order even in the absence of "prior authorization or subsequent ratification."

[16] In support of its contention that common-law agency principles should be applied in all their rigor, petitioner cites five cases (Br. 77–81). None of them are entitled to any credit on this issue before this Court. In *National Labor Relations Board* v. *Sands Mfg. Co.*, 306 U. S. 332, 339–342, the issue was whether remarks made by supervisors, in June, constituted evidence that higher management officials, who closed the plant in late August, were motivated in fact by anti-union reasons. This Court held that since the supervisors did not occupy policy-making positions, their remarks could not be used to prove management

if not rejected, furnish an opportunity for bringing to bear upon any single employee the full economic weight of his employer through the activities of those whose suggestions carry the threat of coercive force solely by reason of their position in the hierarchy of management. Under such circumstances, the Board would be powerless to prevent ruthless invasion, if not total destruction, of rights which this Court has termed "fundamental."

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policy which in turn could be used to prove motive for a subsequent action by company executives. Here, quite to the contrary, the issue is whether coercive activities by supervisors—exercising the employer's disciplinary powers—constituted coercion by the employer. It should be noted that, on the same day as the *Sands* decision, this Court in the *Fansteel* case approved findings that Section 8 (2) was violated by "promotion efforts" of the employer, consisting in part of coercive solicitation by minor supervisory employees. *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 250, 262. The *Ballston-Stillwater* and *Martel Mills* cases in all probability are not representative of the present governing rule in the Second and Fourth Circuits. Compare *Ballston-Stillwater Knitting Co.* v. *National Labor Relations Board*, 98 F. (2d) 758 (C. C. A. 2d), with *National Labor Relations Board* v. *American Manufacturing Co.*, 106 F. (2d) 61, 64 (C. C. A. 2d), modified and affirmed, 309 U. S. 629; *Martel Mills Corp.* v. *National Labor Relations Board*, 114 F. (2d) 624 (C. C. A. 4th), with *National Labor Relations Board* v. *Mathieson Alkali Works, Inc.*, 114 F. (2d) 796, 799 (C. C. A. 4th). See Board's brief in the *Machinists* case, at pp. 35–36. These cases, together with *Link Belt Co.* v. *National Labor Relations Board*, 110 F. (2d) 506 (C. C. A. 7th), and *Cupples Co., Mfrs.* v. *National Labor Relations Board*, 106 F. (2d) 100 (C. C. A. 8th), insofar as each is not distinguishable on its own facts, cannot be considered to have been correctly decided in view of the *Machinists* decision.

National Labor Relations Board v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33.

The fact that petitioner at last instructed its foremen not to interfere with the employees' self-organization (Pet. Br. 60–65)—a factor not present in the *Machinists* case—is scarcely material.[17] It is the coercive effect upon the employees that is decisive. The Circuit Courts of Appeals, as noted in our brief in the *Machinists* case (Bd. Br. 32–37), have placed upon the employer an affirmative obligation to prevent misuse of his power by those whom he has placed in positions of authority.[18] Such an ob-

[17] The instructions given by Superintendent Heinrich prior to the strike (Br. 60) were admittedly ineffectual. The Board found that this may have been attributable in part to the fact that Heinrich himself took an active part in the anti-union campaign (R. 210–211; *supra*, pp. 17–18). It was reasonable for the Board to believe that petitioner's foremen and higher officials would emulate Heinrich's actions rather than accept his words at face value. Vice-President Riley's meeting with the foremen on May 21 (Pet. Br. 60–61) occurred after the campaign had long proceeded unchecked and at a time when its objective had virtually been attained. President Heinz's intervention (Pet. Br. 62–64) came only after the strike and election, when the Association's cause had been lost, at least temporarily (*infra*, pp. 70–73), and when there was no further immediate occasion to influence the employees' choice.

[18] See, e. g., *Consumers Power Co.* v. *National Labor Relations Board*, 113 F. (2d) 38, 44 (C. C. A. 6th); *National Labor Relations Board* v. *Mathieson Alkali Works, Inc.*, 114 F. (2d) 796, 799 (C. C. A. 4th); *National Labor Relations Board* v. *American Mfg. Co.*, 106 F. (2d) 61, 64 (C. C. A. 2d), modified and affirmed, 309 U. S. 629; *Humble Oil & Refining Co.* v. *National Labor Relations Board*, 113 F. (2d) 85, 92 (C. C. A. 5th); *Swift & Co.* v. *National*

ligation must be imposed upon the employer if the freedom which the Act guarantees shall exist within his industrial domain. No difficulties of performance, or other considerations, have been shown to be sufficiently meritorious to justify thwarting the purposes of the Act for want of such an obligation. And, in any event, mere instructions to supervisors such as were given here cannot remove the basis for concluding that coercive activity in violation of the instructions is nevertheless coercion "for which the employer may fairly be said to be responsible." See *Oughton* v. *National Labor Relations Board,* decided November 19, 1940 (C. C. A. 3d). Petitioner "took no effective means to stop repeated violations of the Act" (*Swift & Co.* v. *National Labor Relations Board,* 106 F. (2d) 87, 93 (C. C. A. 10th)) during a period when widespread intimidation and solicitation were taking place in its plant and producing the effects which the Act seeks to prevent. Nor did petitioner voluntarily undertake

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Labor Relations Board, 106 F. (2d) 87, 93 (C. C. A. 10th); *National Labor Relations Board* v. *Ford Motor Co.*, 114 F. (2d) 905, 911–912 (C. C. A. 6th).

In *Oughton* v. *National Labor Relations Board*, decided November 19, 1940 (C. C. A. 3d), the court said: "Our attention is called to evidence offered by the petitioners that the foremen were expressly ordered not to engage in anti-union activities. * * * But the supervisory employees in the instant case had definite indicia of authority. It is inevitable that, under the circumstances, their remarks should carry to rank and file employees the impression that they were speaking for the management." The court then quoted from the decision of the court below to the effect that the employer had taken no step "to communicate its alleged neutrality to the employees" (R. 1146).

to dissipate those effects. The instructions to the supervisors were not an "express and unequivocal repudiation" (Br. 71) of their activities. On the contrary the petitioner, despite disregard of its instructions, confined its announcements to the supervisors themselves. It took no action "to communicate its alleged neutrality to the employees" (R. 1146) or to inform them that the supervisors' efforts, supported as they were by petitioner's powers, were not exerted on behalf of the management and would be resisted and corrected by the management. Indeed, petitioner's reply (Br. 75–76) to the suggestion of the court below that means were readily available had petitioner in fact desired to remove the effects of the supervisors' activities, shows that petitioner still regards reassurance of the employees as none of its concern. Petitioner is scarcely in a position to challenge the Board's conclusion that the order was necessary to dissipate the effects of, and to prevent repetition of, coercion accomplished through the exercise of petitioner's economic power.

And even if petitioner did, at long last, put an end to overt acts of coercion in its plant, the cease and desist order has valid basis in the prior violations. *Consolidated Edison Co.* v. *National Labor Relations Board,* 305 U. S. 197, 230; *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.,* 303 U. S. 261, 271.

The Court's decision in the *Machinists* case likewise supports the Board's finding (R. 206–207; see p. 24, *supra*) that petitioner is responsible for

the activities of its "group leaders." [19] The record establishes that these employees, too, are members of the supervisory staff.[20] Superintendent Heinrich testified that group leaders "see to it that the people under them are doing their work properly * * * they are right on the job, and it is their duty to see that it is done" and that they "directed what [the employees] did * * * and just generally supervised the work there * * *" (R. 753–754, 726). The uniform testimony of the employees, too, establishes that these supervisors issued orders directing and controlling the employees while at work and called them to

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[19] The group leaders with whom we are here concerned (see pp. 19, 21, 22–23, *supra*) are Greenier (R. 721, 341, 447, 451–452, 454–455, 471, 475, 851–852), Hiebner (R. 722, 376), Gerhard (R. 723, 803, 806, 292), Capan (R. 724, 341, 473–474), Sipple (R. 725, 1019, 345, 368), Murphy (R. 725, 493, 496) Bergaski (R. 725), Lewandowski (R. 725), Bennett (R. 727, 290–292, 333, 337), Bogoski (R. 742), Powell (R. 738, 375–376, 379–381, 394), Schwartz (R. 744), Beljan (R. 745), and Zotter (R. 745).

[20] Petitioner asserts (Br. 56) that group leaders "are not regarded as supervisors by the management (R. 753, 754)." This statement, not supported by the references cited, is contrary to the evidence. Superintendent Heinrich testified that there were some 250 supervisory employees in the plant—a number which petitioner accepts (Br. 56, 59)—and that some 112 of these are foremen or foreladies, the remainder being "all hourly workers" (R. 728). It is apparent that the approximately 138 "hourly" supervisors are the group leaders: Heinrich could not have been referring to "assistant foremen," for he testified that the management recognizes no such classification (R. 724); in any event, petitioner concedes that the persons whom it terms "assistant foremen" (see note 11, p. 24, *supra*) are salaried employees (Br. 56).

task for mistakes or other shortcomings (R. 290, 292, 296–297, 298, 304, 345, 368, 376–377, 380, 451–452, 454–455, 465, 496–497, 753–754, 850–851, 867–868, 870, 890, 892). There is evidence that the group leaders had power to recommend discharge (R. 333–334, 455, 474, 721, 863–864, 900). It is also plain that the employees regarded the group leaders as representatives of the management.[21]

We submit that the Board could reasonably conclude (R. 206–207), on this evidence, that the position and authority of the group leaders were such as to give to their activities the backing of petitioner's power and prestige. The wisdom of the Board's conclusion becomes even more clear when viewed in the light of the fact that the group leaders could make use of their directive and disciplinary powers—derived from petitioner—so as to

[21] One employee testified that he regarded as a boss "everybody that directs and gives me orders to carry out to do my work" [*sic*] and that whether such a person is paid by the hour or month is immaterial (R. 381–382). The "source of orders" is what the employees regard as significant (R. 386). Another employee testified that he considered his group leader to be a "boss," which he defined as "one that can order them around and make them do as they show them to * * *" (R. 454). Another testified that "If they are given power to direct our duties from the time we punch in to the time we punch out they are bosses regardless whether they work themselves" (R. 476). Concerning Murphy, a group leader (R. 725), another employee testified that "the word from him to do anything was the same as from any of the bosses"; and that the men looked up to Murphy as a "boss," which he defined as "somebody that gives orders. He gets orders that he in turn gives to somebody else" (R. 496–497).

discriminate against employees whose views concerning labor relations did not coincide with their own.[22]

3. *The refusals to bargain collectively, in violation of Section 8 (5) and (1).*—Petitioner's effort to break the strike (R. 74–75, 959–962, 1005–1006, 1044–1046, 1082, 1097) failed, and on June 4, 1937, all parties concerned agreed that the Board might conduct an election, with both organizations on the ballot; petitioner further agreed to bargain collectively "for the purpose of reaching an agreement affecting wages, hours, and working conditions" with the representative selected by a majority (R. 48–49, 1047–1048). The Union received 1,079 votes in the election, the Association 803 (R. 572); accordingly petitioner opened negotiations with the Union.

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[22] Petitioner asserts (Br. 57) that "both the Union and the Association admit [group leaders] to membership and that they were permitted to take part in the election which has been previously mentioned (Board's Exhibit 16; R. 48 at 49; 566; R. 475, 284)." The references do not support petitioner's statements; indeed, R. 475 establishes that Capan, a group leader (note 19, pp. 31–32, *supra*) was *not* permitted to vote and at R. 283–284 Novak testified that group leaders are *not* eligible for membership in the Union. The election agreement, in stating that "assistant foremen" were not eligible to vote (R. 49), probably referred to group leaders: Superintendent Heinrich testified that petitioner recognizes no such rank as "assistant foreman" (R. 724), and the testimony of Novak, who signed the agreement on behalf of the Union (R. 49), reveals that the term "assistant foreman" as used in the agreement, referred to hourly employees

At the first conference, held on June 17, the Union submitted a proposed contract which served as the basis of all negotiations had prior to July 1 (R. 50–55, 572–573). This contract, similar in form to contracts in effect between the Union and other employers (Bd. Exhs. 25, 26, 27), named petitioner and the Union as the contracting parties in the preamble and provided spaces at the foot for the signatures of the parties (R. 50, 55). At no time during the six or seven meetings (R. 579–580, 1052) held prior to July 1 did petitioner's representatives indicate any dissatisfaction with this type of agreement; the negotiations concerned the Union's request for a wage increase and other substantive provisions of the proposed contract (R. 573, 576, 579–580, 584, 616–618, 1052–1054). Petitioner was represented by two of its working directors, Riley and Shipabarger, who occupied

(R. 284), while the persons whom petitioner refers to as "assistant foreman" were salaried employees (Pet. Br. 56; see notes 11 and 20, pp. 24, 32, *supra*). Accordingly, the Union challenged the eligibility of at least some of the group leaders to vote in the election (R. 284, 475, 900–901, 914), and their votes undoubtedly comprise some of the 45 challenged ballots (R. 572). The group leaders' eligibility for membership in the Association is immaterial to petitioner's responsibility for their anti-Union and pro-Association activities. Compare *International Association of Machinists, etc.* v. *National Labor Relations Board*, No. 16, this Term, decided November 12, 1940, where this Court held that "the fact that they were *bona fide* members of petitioner did not require the Board to disregard the other circumstances we have noted."

important positions in the management (R. 572, 581, 738, 946, 950–951, 1028, 1064, 1075, 1119–1120, 1135–1136).[23] To resolve an apparent impasse concerning wages, Vice-president Anderson attended the conference of June 28, and, toward the close, broke his silence with an announcement that the Union could take or leave the proposal made by Riley and Shinabarger concerning wages, and that "the board of directors backed up everything that Mr. Riley and Mr. Shinabarger done, and that they had full confidence in them, and that Mr. Riley and Mr. Shinabarger had full authority to act for the board of directors" (R. 582–583, 624, 635–636).[24]

On July 1 the Union representatives agreed to submit petitioner's counterproposal concerning wages to the Union members for approval, which was obtained that night (R. 584–585, 1057–1058). Prior to the Union meeting, however, Riley and

[23] Petitioner states (Br. 62) that Riley was a superior of Superintendent Heinrich and was "a director of petitioner, in charge of its Pittsburgh plant."

[24] Petitioner's statement (Br. 6), that there is no support for the Board's finding (R. 215) that Anderson told the Union representatives that Riley and Shinabarger had full authority to act for petitioner, apparently disregards the evidence cited in the text. The court below expressly held that the finding was adequately supported by evidence (R. 1143). While Anderson testified that in fact any agreement had to be ratified by the Board of Directors (R. 1116–1117), it does not appear that either the July 14 agreement or the memorandum finally posted was ever submitted to the Board of Directors.

Shinabarger recalled Kracik, one of the Union negotiators, and announced for the first time that it was contrary to petitioner's "policy" for it to sign any agreement with the Union (R. 584–585, 642–643, 1057–1058, 1088–1089, 1121–1122). No reason for the "policy" was stated (R. 584–585, 642–643).[25] At a conference on the next day, Wilner, the Union's attorney and its chief spokesman throughout the negotiations, protested that petitioner's unexplained refusal to sign any agreement violated the Act; Wilner made it clear that the Union insisted upon a signed agreement (R. 585–586, 1055, 1059).

The only choice open to the Union, however, appeared to be to accept whatever substitute petitioner was willing to offer instead of a signed agreement, or to call another strike; under these circumstances, it was agreed that Wilner and Ebbert, petitioner's attorney, would draft a memorandum embodying the terms already agreed upon by the parties (R. 586, 1059).[26]

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[25] At the hearing, petitioner's representatives advanced as grounds for this "policy," aside from unwillingness to give any "psychological" aid to the Union, only the desirability of making all agreements, whether represented by a signed contract or a bulletin-board statement of policy, subject to immediate change rather than for a specific term (R. 1065–1066, 1124–1126, 1132, 1137). The latter reason, of course, has no bearing on the question whether or not the agreement should be signed.

[26] Petitioner attempts to spell out a waiver of a written contract by the Union (Br. 7–8, 27) relying upon (a) the

At a conference on July 14, the memorandum (R. 60–65) prepared by the attorneys was approved by Riley and Shinabarger, and it was agreed that the memorandum would be posted in the plant on the following day and a copy mailed to Wilner (R. 587–588; but see 1060–1061). The unequivocal nature of this pledge, Vice-president Anderson's assurance that Riley and Shinabarger had full au-

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testimony of Reverend Charles Rice that he had written an article (R. 76–78) stating that the Union employees, at a meeting, agreed to accept petitioner's terms, "but for no definite period, and they refused to sign a contract with the company" (R. 639); and (b) the fact that Kracik told Riley, upon the latter's announcement that petitioner would not enter into a signed agreement, that "that suited me, personally" (R. 644, 1055). The Board considered and rejected both aspects of this contention (R. 224–225). The Union's position was plainly stated by Wilner, the Union's spokesman (R. 1055), at the conference of July 2 (*supra*, p. 37). Reverend Rice—to whom petitioner refers both as "one of the Union's principal advisers and negotiators" (Br. 7, 27) and as one "who had no official status with the Union" (Br. 42)—testified that what he meant was that the terms offered by petitioner were so unsatisfactory that the employees were unwilling to accept them for any specific term, but only for the time being (R. 639–640; cf. R. 1131). Kracik testified that his remarks expressed only his personal opinion (R. 646); petitioner was not misled by this statement, since the Union took an unequivocal position on July 2 (*supra*, p. 37; cf. R. 1132–1133). Petitioner concedes that at the very first conference the Union representatives stated that any departure from the form of contract submitted—which named the Union in the preamble and provided blanks for signatures (R. 50–55)—would have to be submitted to the Union membership, as their authority did not comprehend assent to such changes (Pet. Br. 6; R. 1053).

thority to represent petitioner (*supra*, p. 36), and the absence of any mention that further approval was necessary, lead the Union negotiators to understand that the matter was finally settled (R. 624–625, 628–629). But, while the memorandum was mailed to Wilner, it was not posted; upon inquiry, Wilner was informed that Anderson had objected to certain phrases and had insisted that the entire memorandum be submitted to President Heinz, who was then out of town, for correction (R. 588, 589, 1061–1062, 1115–1117, 1132). Wilner protested that the memorandum had already been agreed upon and pointed out that the Association was circulating rumors that petitioner would never reach any agreement with the Union (R. 589, 613–614). Repeated requests by the Union obtained no results until July 29, when Wilner received the memorandum as redrafted by Heinz (R. 590).

In Heinz's "revision,"[27] the Union's name (R. 60–61) was eliminated from the first paragraph in favor of the phrase "certified collective bargaining

[27] For an accurate comparison between the memorandum agreed to on July 14 (R. 60–65) and the "revision" made by President Heinz, we must refer the Court to the typewritten copy of the revision (Board Exhibit 21) on file with the Clerk, rather than to the version printed at pages 65 to 68 of the record, which incorporates changes made later as a result of the Unions protests on August 11, including reinsertion of the Union's name in the paragraph of the memorandum dealing with grievances (R. 68, 591, 593–594). A portion of Heinz' revision, without the changes, was read into the record (R. 592).

agency for our employees;" in place of the statement that petitioner had "agreed with them as follows" (R. 61) appeared the phrase "the following understanding has been reached;" the typewritten signature at the foot of the memorandum (R. 65) was eliminated;[28] the statement that "the Company recognizes and will deal with the Canning and Pickle Workers' Local No. 325 as the exclusive bargaining agency for the employees" (R. 63) was eliminated in favor of a statement that any group of employees could present grievances (R. 592); all details of the grievance procedure were omitted, including the name of the Union, in favor of the bare statement that the employees could refer grievances "to the bargaining agency for discussion with the company" (R. 63–64, 592); and substantive terms previously agreed upon were altered in significant respects. Wilner promptly stated what was apparent, that petitioner's method of negotiation did not constitute "true collective bargaining" (R. 590–591).

At a conference on August 11 the Union objected to petitioner's aversion to naming the Union in the memorandum, to its elimination of the grievance machinery, and to other changes (R. 591–592).

[28] During petitioner's negotiations with the Association at the time of the strike, the Association's attorney advised that the employer's typewritten signature was as binding as a signature in pen and ink (R. 1015; see R. 1023). Accordingly, the "agreement" between petitioner and the Association bore petitioner's typewritten signature (R. 46–48).

Petitioner took the position that the Union's name had been eliminated to shorten the agreement; but, to the Union's observation that the phrase "certified collective bargaining agency for our employees" was as lengthy as the Union's name, its only rejoinder was that "Mr. Heinz insisted it remain this way" (R. 597).[29] Finally, after prolonged argument, the Union's name was inserted in the last paragraph of the agreement; but petitioner refused to reinsert it in the preamble, and kept out the exclusive recognition clause (R. 71, 591–593, 597).[30] Petitioner's attorney, it is true, suggested at the hearing that "the use of the union name unnecessarily might be offensive to a large part of our employees" (R. 621, 1067); but petitioner's negotiators, in their testimony, not only failed to mention this questionable reason, but also repudiated the brevity excuse given the Union at the time (R. 1109, *supra,* this page). They testified that the Union's name was eliminated because petitioner was "aggravated" and "annoyed" at the Union (R. 1099–1100), because of the "psychology

[29] It was conceded, at the hearing, that the first paragraph of the revision was as long as the paragraph for which it was substituted (R. 1119).

[30] The Union representatives believed that petitioner's maneuver was intended "to make the Heinz Employees Association stand out over and above, head and shoulders above" the Union and to publicize petitioner's opinion that the Union was not "good enough for the Heinz Company to enter into an agreement, weren't responsible enough, or something of that sort" (R. 606, 623).

of this and that," (R. 1125), in order "to get this wild colt back on the reservation" (R. 1100),[21] and "to pound some of the boys down" (R. 1107).

The Union informed petitioner in unequivocal terms that the memorandum, as finally posted in the plant on August 15 (R. 68–71), was not acceptable to it; in a letter to petitioner, dated August 17, the Union stated that the memorandum did not "constitute an agreement" and was not evidence of "bona-fide collective bargaining" but that, since the Union wanted the employees to have the benefits conferred, it would not object to posting of the memorandum, reserving its right to bring before the Board the question whether petitioner had fulfilled its obligation under Section 8 (5) (R. 71–72).

The Board's findings that petitioner did not "accept the full procedure of collective bargaining" because of its desire "to deny to the Union the status and prestige to which it was entitled as the recognized party to a collective agreement" and thus "to impress its employees with the benefits of membership in the Association and to convince them that no benefits had been gained by virtue of membership in the Union" (R. 221–222) are fully supported by the evidence reviewed above. Entirely apart from its refusal to embody accepted

[21] Riley elaborated: by "this wild colt" he meant the Union and "the way you usually break a colt is not to give them everything they want" (R. 1100–1101).

terms in a signed agreement, petitioner manifestly failed in other respects, as the Board found (R. 225), to bargain in good faith. The exclusive recognition which the Act expressly requires (Sections 9 (a), 8 (5)) was never extended to the Union;[32] petitioner did not even concede the Union's right to enter into a contract on behalf of the employees. Its present contention (Br. 17, 19), that the bulle-

[32] Petitioner's statement that in the bulletin posted "the Company recognized the Union as the representative of its employees, thereby unequivocally advising *all* the employees that the Company was prepared to accept the Union as the collective-bargaining agent for its employees" (Br. 75) is not supported by the wording of the bulletin (R. 68–71). As we have seen (*supra*, p. 40), the exclusive recognition clause was eliminated by President Heinz and was not reinserted, petitioner's substitution providing instead that "any individual employee or group of employees shall have the right at any time to present grievances to the company * * *" (R. 592, 71). There is no explanation why petitioner, even if it believed that the right of employees under Section 9 (a) to take up grievances individually should be mentioned in the memorandum, should have eliminated the exclusive recognition clause, which stated no more than the Act provides and is an almost universal provision in collective agreements. Riley's explanation that "the rights of the minority" must be protected (R. 1106–1108) does not explain how granting the Union exclusive recognition would infringe any rights of which the minority are not expressly divested by the exclusive representation provision of Section 9 (a). Congress considered the "protection of minorities" objection when it enacted Section 9 (a) and stated that majority rule was "simple and just" and that agreements between the employer and the majority representative "must apply to all." House Report 1147 (74th Cong., 1st Sess.), p. 20. (Compare Pet. Br. 35.)

tin posted on August 15 (R. 68–71) constitutes a "contract" between petitioner and the Union, is contrary, not only to the Union's view (*supra*, p. 42) but also to the inferences implicit in the circumstances. The Board found that the memorandum "was not in the form of a contract between the parties" (R. 221). The omission of the name of one of the "parties" fully supports this finding. And, in any event, that conclusion is inevitable from the testimony of Riley that the memorandum is not an agreement between the Union and petitioner, the Union having "simply negotiated the agreement for the employees" (R. 1081, 1067, 1069; *cf.* R. 610–612).[33] Compare *National Labor Relations Board* v. *Griswold Mfg. Co.*, 106 F. (2d) 713, (C. C. A. 3d); *National Labor Relations Board* v.

[33] Petitioner's contention (Br. 17–19, 26–27) that the Board's order compels rescission of an agreement now in effect is based upon at least two entirely unwarranted assumptions: (1) that the bulletin-board statement of August 15 constitutes a "contract" between the parties; (2) that an order to bargain collectively, upon request by the Union, is inconsistent with that contract.

Petitioner seeks to buttress the first assumption by stating that it is conceded in the Board's decision (Br. 18) and that the "agreement * * * is admittedly legal and binding" (Br. 17, 29). The Board expressly found that it was unnecessary to decide whether the bulletin-board memorandum constituted "an agreement binding upon the parties" (R. 219) and further found that it "was not in the form of a contract between the parties" and that Riley expressly testified that it was *not* an agreement between petitioner and the Union (R. 221). The testimony of Wilner, the Union's attorney, upon which petitioner relies (Br. 17), is simply to the effect that by posting the memorandum petitioner became "bound" by it as "a matter of psychology" (R. 608).

Louisville Refining Co., 102 F. (2d) 678, 680–681 (C. C. A. 6th), certiorari denied, 308 U. S. 568. Petitioner, in truth, refused even to name the Union as the representative which negotiated the unilateral statement, thus supplying potent evidence of an intent to "undercut its authority." *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 870 (C. C. A. 2d), certiorari denied, 304 U. S. 576. The evasive and conflicting reasons given for this refusal (*supra*, pp. 41–42) only confirm the inference of bad faith. As the Board pointed out (R. 221–222), none of those reasons had prevented petitioner either from stat-

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In its letter protesting against the memorandum the Union stated that the document "does not in our opinion constitute an agreement * * *" (R. 71–72, 630–631).

The second assumption lacks even the suggestion of any foundation. The bulletin-board statement, by its very terms, is not for any specific period of time. Obviously, therefore, either party is free to suggest that negotiations about different terms should be resumed. Compare the observation of this Court in *National Labor Relations Board* v. *Sands Mfg. Co.*, 306 U. S. 332, 342: "But we assume that the Act imposes upon the employer the further obligation to meet and bargain with his employes' representatives respecting proposed changes of an existing contract and also to discuss with them its true interpretation, if there is any doubt as to its meaning." Petitioner's negotiators, in stressing the desirability of not having an agreement for any definite period, emphasized the need for changing its terms to meet changes in "conditions" (R. 1065–1066, 1124–1126, 1132, 1137). Wilner testified that petitioner could, at any time, take action inconsistent with the "agreement" (R. 607). And Riley and Shinabarger likewise testified that petitioner is free to alter the terms at any time (R. 1102–1103, 1112–1113, 1125, 1128).

ing in its "agreement" with the Association, at the time of the strike, that "we have recognized the Heinz employees Association as the collective bargaining agent for our employees" or from naming the members of the Association's committee (R. 44–48, 623; see R. 74–75, 957–958, 1098). But, after bargaining through six or seven conferences on the basis of a draft naming the Union in the preamble, without objecting on that score, petitioner then eliminated the Union's name upon grounds that reveal rather than conceal its animus.[34] There is unchallenged testimony (R. 660–661) that a labor organization, if it is to function effectively, must receive the credit and recognition to which it is entitled as the negotiator of terms, and that a refusal to name it denies such credit, confuses the employees, and makes possible the spreading of rumors aimed at discrediting the representative.[35] The Board could infer that petitioner's refusal to

[34] Petitioner appears to regard the Union's desire to be named in the memorandum as based on unworthy "psychological" reasons, that is, to enhance its prestige (Br. 9, 38; R. 609, 622). Although that would be an entirely appropriate reason, as petitioner's director, Riley, indicated (R. 1113–1114), Wilner testified that the Union desired "to show that we were being recognized" and feared that some of the poorly educated employees might not interpret the clause "certified collective bargaining agency under the Wagner Labor Relations Act" as petitioner's shorthand method of referring to the Union (R. 621–622).

[35] The Association was prompt to take advantage of this opportunity in the present case (*supra*, p. 39; *infra*, pp. 72–73).

name the Union aimed at these effects and thus evidenced bad faith. Other aspects of its behavior (see R. 225) point in the same direction: it repudiated terms, agreed upon after prolonged negotiation, despite its representation that the negotiators who agreed to those terms were fully authorized to act on its behalf. It interposed long, unexplained delays, although informed that they were injuring the Union. Finally, upon patently empty grounds, it struck from the memorandum all details of the grievance procedure to which, admittedly, it had no objection (R. 1063–1064).

II

PETITIONER'S REFUSAL TO ENTER INTO A SIGNED AGREEMENT WITH THE UNION VIOLATED THE ACT AND THE BOARD'S ORDER REQUIRING EMBODIMENT OF AGREED TERMS IN SUCH AN AGREEMENT IS VALID

The Board found (R. 214–224) that petitioner violated Section 8(5) and (1) of the Act by refusing to embody terms agreed upon by petitioner and the Union in a signed trade agreement. The Board's order requires petitioner to bargain collectively with the Union and, if an understanding is reached concerning wages, hours, or other conditions of employment, to embody said understanding in a written, signed agreement, if requested so to do by the Union (R. 229). This order is supported by each of two independent grounds: (A)

that, under the circumstances of this case,[36] petitioner's refusal to enter into a signed agreement violated the Act and (B) that, in any event, the Board's order constitutes an appropriate affirmative remedy for petitioner's refusal in other respects to bargain collectively.

It may be noted, at the outset, that petitioner beclouds both branches of the argument by insisting that they rest solely upon an interpretation of the Act which would require an employer "to make an agreement against his will" and would impose compulsory arbitration upon industry (Br. 50, 30–31, 37). This contention is without basis. The Board has never construed the Act as requiring an employer to accept specific demands made by a union.[37] The Board's finding and its order in the

[36] In its decision the Board quoted as "equally applicable to the facts of this case" (R. 223) findings previously made by the Board in *Matter of Inland Steel Co.*, 9 N. L. R. B. 783, likewise involving the question of whether an employer's refusal to embody agreed terms in a signed trade agreement violated the Act. One of those findings reads as follows (R. 223): "Whether there may be, in some future case, circumstances indicating that the employer there involved may under the Act decline to embody understandings in a signed agreement, we need not here decide. It is certain that we are not confronted with such circumstances in this case."

[37] It does, of course, require a good faith attempt to compose differences. The extent of the duty to bargain in good faith, imposed by Section 8 (5), has frequently been described: In *Globe Cotton Mills* v. *National Labor Relations Board*, 103 F. (2d) 91, 94 (C. C. A. 5th), the court said: "We believe there is a duty on both sides, though difficult of legal enforcement, to enter into discussion with an open

case at bar each presupposes that specific "adjustments and agreements" (*National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45) have been made, that terms have been accepted by both sides. After such an agreement has been reached, and only then, the issues here presented to the Court arise for the first time.

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and fair mind, and a sincere purpose to find a basis of agreement touching wages and hours and conditions of labor, and if found to embody it in a contract as specific as possible, which shall stand as a mutual guaranty of conduct, and as a guide for the adjustment of grievances." In *National Labor Relations Board* v. *Highland Park Mfg. Co.*, 110 F. (2d) 632, 637 (C. C. A. 4th), the court said: "The act, it is true, does not require that the parties agree; but it does require that they negotiate in good faith with the view of reaching an agreement if possible; and mere discussion with the representatives of employees, with a fixed resolve on the part of the employer not to enter into any agreement with them, even as to matters as to which there is no disagreement, does not satisfy its provisions." Similarly, in *National Labor Relations Board* v. *Griswold Mfg. Co.*, 106 F. (2d) 713, 723 (C. C. A. 3d), the court stated: "It is obvious that an employer who enters into negotiations with a labor union representing his employees, with his mind hermetically sealed against even the thought of entering into an agreement with the union, is guilty of refusing to bargain collectively with the representatives of his employees in good faith, as required by the Act, and is therefore guilty of an unfair labor practice." The employer's discharge of his duty is to be tested, among other things, by "the persistence with which the employer offers opportunity for agreement." *National Labor Relations Board* v. *Sands Mfg. Co.*, 96 F. (2d) 721, 725 (C. C. A. 6th), affirmed, 306 U. S. 332. Compare *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515, 548, stating a duty to take "those preliminary steps without which no agreement can be reached," to "make reasonable effort to compose differences."

A. PETITIONER'S REFUSAL TO ENTER INTO ANY SIGNED AGREEMENT CONSTITUTED A REFUSAL TO BARGAIN COLLECTIVELY

Section 8 (5) of the Act concededly does not impose an express obligation to embody agreed terms in a contract of any kind. But this circumstance can scarcely be deemed material. Congress sought no less an objective than the protection of commerce by "removing certain recognized sources of industrial strife and unrest" by "encouraging practices fundamental to the friendly adjustment of industrial disputes" and by "restoring equality of bargaining power between employers and employees" (Sec. 1, *infra*, pp. 84–86).[38] To these ends, Congress, among other things, declared it to be the public policy of the United States to encourage "the practice and procedure of collective bargaining" (Sec. 1) and, in Sections 7 and 8 (5), Congress put strength behind that declaration by giving employees the right "to bargain collectively through representatives of their own choosing" and by making it an unfair labor practice for an employer "to refuse to bargain collectively" with the duly authorized representatives of his employees. This Court has recognized the broader purposes behind the bare words by declaring that the "manifest objective in providing for collective bargaining" was "the making of contracts with labor organizations" and that "the purpose of the statute was to compel em-

[38] See Sen. Rep. No. 573, 74th Cong., 1st Sess., pp. 1–4, 12, 13; H. Rep. No. 1147, 74th Cong., 1st Sess., pp. 8–10, 20.

ployers to bargain collectively with their employees to the end that employment contracts binding on both parties should be made." *Consolidated Edison Co.* v. *National Labor Relations Board,* 305 U. S. 197, 236; *Labor Board* v. *Sands Mfg. Co.,* 306 U. S. 332, 342.[39]

It would appear to be axiomatic that the right of employees, and the obligation of employers, to bargain collectively should be construed so as to comprehend whatever is reasonably appropriate to accomplish, and avoid frustrating, these recognized legislative objectives.[40] It is the position of the

[39] In discussing Section 8 (5) of the bill which became the Act, the House Committee on Labor stated (H. Rep. No. 1147, 74th Cong., 1st Sess., p. 20): "The fifth unfair labor practice, regarding the refusal to bargain collectively, rounds out the essential purpose of the bill to encourage collective bargaining and the making of agreements. * * * As has frequently been stated, collective bargaining is not an end in itself; it is a means to an end, and that end is the making of collective agreements stabilizing employment relations for a period of time, with results advantageous both to the worker and the employer." The Senate Committee on Education and Labor likewise said (Sen. Rep. No. 573, 74th Cong., 1st Sess., pp. 12–13): "It seems clear that a guarantee of the right of employees to bargain collectively through representatives of their own choosing is a mere delusion, if it is not accompanied by the correlative duty on the part of the other party * * * to negotiate with them in a bona fide effort to arrive at a collective bargain agreement. * * * The object of collective bargaining is the making of agreements that will stabilize business conditions and fix fair standards of working conditions."

[40] E. g., *Warner* v. *Goltra,* 293 U. S. 155, 158; *Art Metals Construction Co.* v. *National Labor Relations Board,* 110 F. (2d) 148, 150 (C. C. A. 2d). Compare, e. g., *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420; *Buttfield* v.

Government that one aspect of this right and obligation to bargain collectively under normal circumstances (see note 36, p. 48, *supra*) is the embodiment of agreed terms in a signed trade agreement to which the employer and the authorized representative of the employees are parties. The support for our position is found in several considerations bearing directly upon the intention reasonably to be attributed to Congress at the time the Act was passed.

1. The signed trade agreement as an accepted feature of "the practice and procedure of collective bargaining"

The "practice and procedure of collective bargaining" (Sec. 1), given legal sanction by the Act, had developed through the course of years and, in 1935, had well-defined attributes made familiar through exhaustive studies by governmental agencies and students of labor relations and economics. The testimony and authorities introduced into the record in this case are uniformly to the effect that the signed contract was recognized as the normal and contemplated objective of the bargaining process in this country and

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Stranahan, 192 U. S. 470. It has been held that the question whether a particular action by an employer falls within the prohibition of Section 8 (5) is one upon which the Board's determination will be final if supported by the evidence. *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board*, 91 F. (2d) 134, 139–140 (C. C. A. 4th), certiorari denied, 302 U. S. 731. See *South Chicago Co.* v. *Bassett*, 309 U. S. 251.

abroad (Appendix A).[41] Employers acknowledged the signed agreement as the normal medium for the collective compact (Appendix B) and trade unions regarded the achievement of such agreements as the criterion of successful bargaining.[42] No defensible reason was advanced in justification of a failure to observe the usual business practice with reference to labor relations.

It was generally known that employers who announced a "policy" against signed agreements with labor unions, were motivated by a desire to prevent effective organization of their plants or to weaken or destroy a representative already selected

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[41] Petitioner offered no evidence to contradict that offered by the Board (R. 649–651, 653–654, 669–678, 680, 682, 685) and declined cross-examination of the Board's expert witness (R. 690).

[42] Lewis L. Lorwin, *The American Federation of Labor* (1933), p. 309; U. S. Department of Labor, Bureau of Labor Statistics, Bull. No. 618, *Handbook of American Trade Unions* (1936), pp. 17–18; Commons and Associates, *History of Labor in the United States* (1926), vol. II, pp. 179–181, 423–424, 480; John R. Commons, *Trade Unionism and Labor Problems* (1905), p. vii; John A. Ryan, *Declining Liberty in America and Other Papers* (1927), p. 210; Perlman and Taft, *History of Labor in the United States, 1896–1932* (1935), vol. IV, pp. 9–10; George G. Groat, *Organized Labor in America* (1926), p. 341; William E. Walling, *American Labor and American Democracy* (1926), vol. I, pp. 18–19; Sumner H. Slichter, in Annals of American Academy of Political & Social Science (March 1935), p. 116; see, also, *Republic Steel Corp.* v. *National Labor Relations Board*, 107 F. (2d) 472, 478 (C. C. A. 3d).

(R. 661–662, 680, 685, 687–690). The substitute offered, when any was, consisted of unilateral bulletin-board statements of policy which were recognized as obviously not the product of bargaining between the employer and a representative whom he accepted as a proper party to conclude agreements on behalf of the employees (R. *id.*; Appendix C).

Long prior to 1935, then, it was a matter of uniform and authoritative definition that "collective bargaining" included a willingness and obligation to enter into a signed trade agreement if terms acceptable to both parties were reached (Appendix D). Works contemporaneous with consideration of the Act by Congress merely expressed pervasive thought in the field when they referred to the signed trade agreement as "identical with recognition," and the "essence of union recognition," and stated that legislation "affirming the right of employees to organize must affirm also their right to bargain collectively for the purpose of making trade agreements" (see R. 656–658).[43]

These settled interpretations of the "practice and procedure of collective bargaining" were not

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[43] Perlman and Taft, *History of Labor in the United States, 1896–1932* (1935), vol. IV, p. 10; Sumner H. Slichter, *Collective Bargaining* (1935), p. 62; and Twentieth Century Fund, Inc., *Labor and the Government* (1935), p. 339. See also Sumner H. Slichter, *Annals of the American Academy*, March 1935, p. 116; National Labor Relations Board, Division of Economic Research, Bull. No. 4, *Written Trade Agreements in Collective Bargaining* (1939), pp. 16–17.

disavowed by Congress. On the contrary, the legislative committees stated the principal objective of the practice to be "the making of collective agreements" (note 39, p. 51, *supra*)." There is no support whatever for the contention (Pet. Br. 30–32) that Congress intended to exclude from the collective bargaining which the Act requires an obligation which was accepted as an indispensable feature of the precedent bargaining practice.

2. Congress knew of and approved the uniform administrative practice that the duty to "bargain collectively" comprehends an obligation to embody agreed terms in a signed agreement

Congress, in enacting the National Labor Relations Act, had before it and relied upon the considerable administrative practice under the prior legislation likewise designed to protect and enforce the rights of employees to self-organization and

" The portion quoted by petitioner (Br. 30–31) from the report of the Senate Committee plainly means what we have already conceded, namely, that the Act does not require agreement upon terms (supra, pp. 48–49). That the statement of Senator Wagner (Pet. Br. 31) likewise bears this meaning is shown by the Senator's subsequent characterization of the trade agreement as "the hallmark of recognition" and his statement that when the president of the Republic Steel Corporation "refused to sign a contract even though its terms were not in dispute, he took a position irreconcilable with the common course of business practice, and out of line with the enlightened action of the nation's largest steel company [United States Steel Co.] in obeying the law in all its implications." *New York Times*, July 25, 1937, Section 8, pp. 1, 22–23.

collective bargaining. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 266–267.[45] Under that practice, the duty to bargain collectively uniformly included an obligation to embody agreed terms in a signed trade agreement. The National Labor Board, created to administer Section 7 (a) of the National Industrial Recovery Act,[46] so held,[47] as did its successor, the first National Labor Relations Board.[48] Similarly,

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[45] H. Rep. No. 1147, 74th Cong., 1st Sess., pp. 3, 5, 7, 15–18, 20–22, 24; Sen. Rep. No. 573, 74th Cong., 1st Sess., pp. 2, 8–9, 13, 16, 17. These reports reveal that the Committees went with painstaking care into the problems encountered under previous statutes designed to foster collective bargaining and the doctrines evolved by the administrative agencies entrusted with the task of solving those problems. The House Committee said (p. 5): "The National Labor Relations Board, following the lead of its predecessor, the National Labor Board, has enriched the body of labor law by a notable series of decisions interpreting and applying Section 7 (a)."

[46] That section provided, in part, that "* * * employees shall have the right to organize and bargain collectively through representatives of their own choosing * * *". (48 Stat. 195).

[47] *Matter of Harriman Hosiery Mills*, 1 N. L. B. 68; *Matter of Pierson Mfg. Co.*, 1 N. L. B. 53; *Matter of National Aniline & Chemical Co.*, 2 N. L. B. 38; *Matter of Connecticut Coke Co.*, 2 N. L. B. 88. See, also, *Matter of Whittier Mills Co.*, Textile Labor Relations Board, Case No. 34.

[48] *Matter of Houde Engineering Co.*, 1 N. L. R. B. (old) 35; *Matter of Denver Towel Supply Co.*, 2 N. L. R. B. (old) 221; *Matter of National Aniline & Chemical Co.*, 1 N. L. R. B. (old) 114; *Matter of Colt's Patent Fire Arms Co.*, 2 N. L. R. B. (old) 155; *Matter of Federal Mining & Smelting*

the Railway Labor Act of 1926, as amended in 1934 to impose a duty "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions * * *," was interpreted by the National Mediation Board to require signed contracts.[49] Any Congressional intention to depart from these precedents, by lessening the content of the duty to bargain collectively, is expressly negatived in the legislative history of the present Act.[50] The reenactment of the phrase

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Co., 2 N. L. R. B. (old) 481; *Matter of Atlanta Hosiery Mills*, 1 N. L. R. B. (old) 144; *Matter of St. Joseph Stockyards Co.*, 2 N. L. R. B. (old) 112; *Matter of Square D Co.*, 2 N. L. R. B. (old) 430.

[49] 44 Stat. 577, 48 Stat. 926, 48 Stat. 1184, 45 U. S. C., Supp. V, Sec. 151, 152, et seq. In its *First Annual Report* (June 1935), the National Mediation Board stated as follows (pp. 1–2):

"Three basic principles are laid down in the act as a foundation for sound labor relations on the railroads:

"1. *Written agreements.*—The relations are to be governed not by the arbitrary will or whim of the management or the men, but by written rules and regulations mutually agreed upon and equally binding on both. A positive duty is imposed on all carriers and their employees 'to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions.' And every carrier is required to file with the National Mediation Board a copy of every such contract * * *."

[50] The House Committee on Labor stated (H. Rep. No. 1147, 74th Cong., 1st Sess., p. 3) that the present Act constitutes "an amplification and clarification of the principles enacted into law by the Railway Labor Act and by Section 7 (a) of the National Industrial Recovery Act." The Committee further observed (*id.*, at p. 7) that Sections 7 and 8

"bargain collectively," without limitation or modification, constitutes under the circumstances an approval and adoption of the preceding administrative, practical interpretation. *Helvering* v. *R. J. Reynolds Tobacco Co.*, 306 U. S. 110, 115; *Hassett* v. *Welch*, 303 U. S. 303, 312; *Brewster* v. *Gage*, 280 U. S. 327, 337; *National Lead Company* v. *United States*, 252 U. S. 140, 146–147; *New York, N. H. & H. R. R. Co.* v. *Interstate Commerce Commission*, 200 U. S. 361, 401–402.

3. Embodiment of agreed terms in a signed trade agreement is necessary to effectuate the purposes of the Act

Informed opinion in the field is uniformly to the effect that it is "through the trade agreement * * * that collective bargaining becomes an agency of industrial order." [51] The National Mediation Board has stated that the absence of strikes in the railroad industry is primarily explainable "not by the mediation machinery of the Railway Labor Act, but by the existence of these collective labor contracts." [52] And this testimonial

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of the National Labor Relations Act are reenactments of "Section 7 (a), as it now appears in the National Industrial Recovery Act, * * * amplified by the specific prohibition of certain unfair labor practices, which by fair interpretation would constitute infringements upon the substantive rights of employees declared in section 7 (a)."

[51] Walton H. Hamilton, *Collective Bargaining*, in *Encyclopedia of the Social Sciences* (1926), vol. III, p. 629.

[52] *First Annual Report of the National Mediation Board* (June 1935), p. 36. See, also, *Second Annual Report of the National Mediation Board* (1936), p. 1; *Third Annual Re-*

was given prominent mention by this Court in upholding that statute. *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515, 555. The refusal to embody agreed terms in a signed agreement, understandable to labor only as the manifestation of an unwillingness to accept the collective bargaining process in full, may in itself frustrate the intent of Congres to remove all basis for disputes arising from resistance to self-organization and collective bargaining.[53] Fully as plain is the

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port of the Nationdl Mediation Board (1937), pp. 2–3, 20; *Fourth Annual Report of the National Mediation Board* (1938), pp. 1, 29.

[53] "So long as the majority of employees in a large number of plants wish to be represented by organizations with which the management is unwilling to sign agreements, industrial relations are bound to be unsatisfactory and strikes are pretty certain to be frequent." Sumner H. Slichter, in *Annals of the American Academy* (March 1935), pp. 119–120. Another authority is of the opinion that the "refusal to sign an agreement * * * is likely to be an indication that attitudes of conflict remain predominant and that the party refusing to sign is biding its time for a renewal of hostilities. * * *." R. R. R. Brooks, *When Labor Organizes* (1937), p. 224. The bitterly fought Inland Steel strike of 1937 was caused by the company's refusal, in advance of negotiations, to enter into a signed agreement of any kind, upon the bare plea that the Act did not require it to do so. *Matter of Inland Steel Co.*, 9 N. L. R. B. 783, 796–797. In *Matter of St. Joseph Stockyards Co.*, 2 N. L. R. B. 39, 54, the Board stated as follows: "Viewed from the other side, the main objective of organized labor for long has been the collective agreement and the history of organization and collective bargaining may be written in terms of the constant striving for union recognition through agreement. In many cases employees have left their employment and struck solely

relation of signed agreements to the prevention of strikes caused by disputes concerning terms of employment. The Congressional committees recognized this relation when they described the purpose of the bargaining process as "the making of collective agreements stabilizing employment relations for a period of time, with results advantageous to both the worker and the employer." [54]

The agreement customarily defines the terms of employment for its duration, erects machinery for the adjustment of disputes, and prescribes a procedure for renewal at expiration; in this and other ways, it exerts a strong influence against recourse to strife by either party and thus establishes its position as the foremost agency for the preservation of industrial peace (Appendix E). See *Consolidated Edison Co.* v. *Labor Board,* 305 U. S. 197, 237. It is uniformly thought of as a code whereby the rule of "law, democratically made by employees as well as employers, has been substituted for the

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because of the employer's refusal to enter into a collective agreement. An objective that has been so bitterly contested by employer and employee, that has been the cause of many long and costly strikes, must be evaluated in the light of the conflict it has produced."

[54] H. Rep. No. 1147, 74th Cong., 1st Sess., p. 20, S. Rep. No. 573, 74th Cong., 1st Sess., p. 13. Section 1 of the Act declares that the inequality of bargaining power between employers and employees burdens commerce, *inter alia*, "by preventing the stabilization of competitive wage rates and working conditions within and between industries."

rule of economic force and warfare" in industrial relations.[55]

This situation may well be contrasted with that existing under a unilateral statement of policy. Neither the Union nor the employer accepts the responsibility of abiding by the "terms" of such a statement.[56] The union is at a serious disadvantage in retaining members; its energies are dissipated in a continuing struggle to obtain recogition; it is beset by insecurity. The threat to its very ex-

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[55] See *First Annual Report of the National Mediation Board* (June 1935), p. 35. See also, e. g., John R. Commons, *Tendencies in the Trade Union Development in the United States*, in *International Labour Review* (June 1922) ("* * * an extra-legal code or industrial law * * * a constitution limiting the rights, duties, liberties, and risks of the two contracting parties"), Ethelbert Stewart, *Trade Agreements*, in *Annals of the American Academy of Political and Social Science* (Sept. 1910), p. 330 ("* * * the mutual working basis, the magna carta of each."); Commons and Andrews, *Principles of Labor Legislation* (Rev. ed., 1927), p. 129 ("* * * the supreme law of the industry"); Gordon S. Watkins, *Labor Management* (1928) ("* * * a constitution for industry"); Perlman & Taft, *History of Labor in the United States, 1896–1932* (1935), vol. IV, pp. 9–10 ("* * * a written constitution of a new type of government, an *industrial government* * * *."); Report of the United States Coal Commission (Senate Document No. 195, 68th Cong., 2d Sess.), Part III, p. 1338 ("* * * a constitutional basis of relationship").

[56] Compare C. G. Eubanks in *Management's Industrial Relations Problems* (1936), p. 32; Twentieth Century Fund, Inc., *Labor and the Government* (1935), pp. 329–330; *New York Journal of Commerce*, January 12, 1940, p. 1.

istence almost inevitably detracts from the stability of its relations with the employer.[57]

The record of observance of signed agreements by both employers and unions is good (R. 657).[58] The success of the signed trade agreement in the bituminous coal industry where, for many years, "industrial war was chronic, bloodshed frequent, distrust, hatred, and poverty universal"[59] is but one example of its efficacy in securing the industrial peace which Congress sought to promote; the history of numerous industries attests to the fact that where the trade agreement prevails, stoppages due to strikes and other forms of friction are notably infrequent.[60]

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[57] National Labor Relations Board, Division of Economic Research, Bull. No. 4, *Written Trade Agreements in Collective Bargaining* (1940), pp. 239–245.

[58] Sumner H. Slichter, *The Government and Collective Bargaining*, in *Annals of the American Academy of Political & Social Science* (March 1935), p. 116; U. S. Commission on Industrial Relations, *Final Report and Testimony* (1916), vol. I, pp. 119–120; E. C. Brown, *The New Collective Bargaining in Mass Production: Methods, Results, Problems*, in *Journal of Political Economy* (Feb. 1939), p. 40. In International Labour Office, *Collective Agreements* (Geneva, 1936), it is stated that (p. 265): "* * * the collective agreement * * * has discharged its important functions on the whole so smoothly and efficiently that the full extent of its influence on our national life is often overlooked."

[59] John R. Commons, *A New Way of Settling Labor Disputes*, in *Review of Reviews* (1901), vol. 23, p. 329.

[60] E. E. Cummins, *Labor Problem in the United States* (1935), pp. 153–154, 202–203, 209. Cummins also adverts to the long success of signed agreements in the foundry, glass

This normal final step in the "practice and procedure of collective bargaining" constitutes, as a matter of fact, the most effective means whereby collective bargaining accomplishes the purposes of the Act. No reason is apparent why this step should be excluded by judicial interpretation.

The Circuit Courts of Appeals for the First, Second, Fourth, Eighth, and Tenth Circuits, as well as the court below, have held that an employer's refusal to embody agreed terms in a written trade agreement constitutes a refusal to bargain collectively in violation of the Act., *Bethlehem Shipbuilding Corp.* v. *National Labor Relations Board,* 114 F. (2d) 930 (C. C. A. 1st); *Art Metals Construction Co.* v. *National Labor Relations*

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bottle, and publishing industries (pp. 200–202), and notes that the agreements of the Amalgamated Clothing Workers of America have succeeded in "bringing some degree of order into what was formerly one of the most chaotic industries we had" (p. 206). Professor Commons points out that the period from 1898 to 1904 was characterized both by absence of industrial strife and by a remarkable growth in trade agreements. Commons and Associates, *History of Labor in the United States* (1926), vol. II, pp. 524–525. W. B. Catlin remarks that successful publishing concerns have guarded against interruption of their operations by labor disputes by utilizing the written trade agreements. Catlin, *The Labor Problem in the United States and Great Britain* (1935), pp. 435–437. When the national railway agreement was abrogated in 1921 and further signed agreements were refused, a period of violent strife ensued. National Labor Relations Board, Division of Economic Research, Bull. No. 4, *Written Trade Agreements in Collective Bargaining* (1940), pp. 153–154.

Board, 110 F. (2d) 148 (C. C. A. 2d); *National Labor Relations Board* v. *Highland Park Mfg. Co.,* 110 F. (2d) 632 (C. C. A. 4th); *Hartsell Mills Co.* v. *National Labor Relations Board,* 111 F. (2d) 291 (C. C. A. 4th); *Wilson & Co., Inc.* v. *National Labor Relations Board,* decided December 2, 1940 (C. C. A. 8th); *Continental Oil Co.* v. *National Labor Relations Board,* 113 F. (2d) 473 (C. C. A. 10th), pending on certiorari limited to another point, No. 413, this term. See, also, *National Labor Relations Board* v. *Sunshine Mining Co.,* 110 F. (2d) 780, 788, 793 (C. C. A. 9th), certiorari pending, No. 352, this Term. Only the Circuit Court of Appeals for the Seventh Circuit has held to the contrary. *Inland Steel Co.* v. *National Labor Relations Board,* 109 F. (2d) 9 (C. C. A. 7th); *Fort Wayne Corrugated Paper Co.* v. *National Labor Relations Board,* 111 F. (2d) 869 (C. C. A. 7th).[61] The opinions in the *Art Metals* and *Highland Park* cases lucidly state various of the considerations presented in this brief. We respectfully refer the Court to those opinions.

[61] In the *Inland Steel* case the court held that a signed agreement could not be held to constitute "an integral part of the term 'collective bargaining' " unless such an agreement was required in all cases, whereas the Board was said to have conceded that there might be some circumstances in which it was not necessary to reduce agreed terms to writing (109 F. (2d), at 23–24, see note 36, p. 48, *supra*). It followed, the court held, that the form of the agreement was a matter for negotiation, and, since "the proposal to sign an agreement was given rather careful consideration" by the company

B. THE BOARD'S ORDER IS VALID

The propriety of the Board's order (R. 229) assumes an independent significance here only in the event this Court overturns the Board's finding (R. 214–224) that petitioner violated Section 8 (5) and (1) of the Act by refusing to embody terms agreed upon by petitioner and the Union in a signed trade agreement. If that finding be upheld, as we

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(although the company's position left no room for "negotiation"), there was no refusal to bargain (109 F. (2d), at 24–25). The court also relied upon the statement by this Court in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45, that "The Act does not compel agreements between employers and employees." Compare pp. 48–49, *supra*. In the *Fort Wayne* case, decided after the *Art Metals* and *Highland Park* decisions, the Seventh Circuit reaffirmed its holding in the *Inland Steel* case, stating that the last decision "is the law in this circuit until (and *if*) a contrary ruling is made by the Supreme Court" (111 F. (2d) at 872, italics the Court's). The court held, however, that under the circumstances of the *Fort Wayne* case, the employer's willingness to post agreed terms as a unilateral statement of policy but not to embody those same terms in a signed agreement, made it "difficult, if not impossible, to avoid the conclusion that the employer did not wish to deal with, and would not recognize the labor union directly or impliedly, and this attitude accounts for its refusal to sign any labor agreement with a labor union," and that this attitude was "repugnant to the spirit of the Act" (*ibid.*). The court seemed to recognize that the signed agreement was an element of recognition when it stated that the obligation to bargain collectively "is not fully met where the employer refuses to act if its action recognizes a union" (*ibid.*). But, upon settlement of the decree, without opinion, the signed agreement provision was stricken from the Board's order. *Cf National Labor Relations Board* v. *Falk Corp.*, 308 U. S. 453, 455.

have argued it should be (pp. 50–64, *supra*), there can scarcely be any doubt as to the power of the Board to issue the order in question.[62] At this point, therefore, our argument will be confined to showing that, aside from that particular finding, there are other cogent reasons for enforcing the order as within the discretion of the Board.

There are two conceivable reasons for giving such independent consideration to the validity of the order. First, the substantive provisions of Section 8 (5) might be thought not to impose a general obligation to incorporate agreed terms in a signed agreement; secondly, the Union in this case might be thought to have acquiesced in petitioner's refusal to discharge the obligation. But, under either or both of these circumstances, we submit, the order is a valid exercise of the Board's "judgment and discretion in determining, upon the basis of the findings, whether the case is one requiring an affirmative order, and in choosing the particular affirmative relief to be ordered." *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 265; *International Association of Machinists etc.* v. *National Labor Relations Board*, No. 16, this Term, decided November 12, 1940.

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[62] This Court, in *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350, enforced an order requiring an employer to bargain collectively and, if an understanding were reached, to embody it "in an agreement" if the Union so requested. Accord: *Globe Cotton Mills* v. *National Labor Relations Board*, 103 F. (2d) 91 (C. C. A. 5th). The only added requirement here is that the agreement be signed.

1. The evidence fully supports the Board's finding (R. 221–222) that, regardless of whether Section 8 (5) imposes a duty to embody agreed terms in a signed agreement, petitioner's refusal of such an agreement in this case rested upon its desire to disparage the Union as an appropriate representative of the employees by denying it a recognized status as such representative. Petitioner's stand on the signed contract question, when viewed in the light of its entire course of conduct, plainly is shown to be merely one phase of its efforts to avoid genuine collective bargaining.[63] An order which merely directed petitioner to bargain collectively would permit the same evasion, the same efforts to render the process nugatory. To avoid the sterility to which petitioner's persistence in its attitude would condemn future bargaining between the parties, the Board may make specific provision against one aspect of petitioner's failure to manifest the requisite good faith. The provision of the order in question here, we submit, is "adapted to

[63] Compare *National Labor Relations Board* v. *Highland Park Mfg. Co.*, 110 F. (2d) 632, at 637–638 (C. C. A. 4th): "* * * the attitude of respondent towards signing a written contract was of a piece with its refusal, as found, to make even an oral agreement regarding matters as to which there was no real disagreement. Both arose out of a determination not to enter into real collective bargaining with the union. If some valid reason had been advanced for unwillingness to reduce agreements to writing, this conclusion would not necessarily follow; but in the absence of explanation, it clearly indicates respondent's hostility to the whole process of collective bargaining."

the situation which calls for redress." *National Labor Relations Board v. Mackay Radio & Telegraph Co.*, 304 U. S. 333, 348.

2. Any technical acquiescence by the Union in petitioner's refusal to sign an agreement is equally insubstantial as a basis on which to rest petitioner's argument. The order is appropriate because the Board may issue an order "formed and phrased to prevent" evasion of the Act. *National Labor Relations Board* v. *Pure Oil Co.*, 103 F. (2d) 497, 498 (C. C. A. 5th). Upon this record, there is little room for a supposition that in future bargaining petitioner would consent to a signed agreement even if the Union insisted that it discharge that obligation. It is, therefore appropriate for the Board to obviate the necessity for a future proceeding by issuing an order which spells out an important feature of petitioner's duty. This duty, it may be observed, may be viewed as arising either under a general obligation to embody agreed terms in a signed agreement (pp. 50–64, *supra*) or under the obligation, required to be met by petitioner in the circumstances here, to cease one phase of its efforts to avoid genuine collective bargaining (pp. 67–68, *supra*). In either case the reasonable anticipation that petitioner will impose a block to the realization of the objectives sought through the collective bargaining procedure, warrants a preventative order.

Orders identical with the provisions here under discussion have been enforced by the Circuit Courts of Appeals for the Fourth and Ninth Circuits, expressly without reference to whether the employer violated the Act by refusing to embody agreed terms in a signed agreement. *National Labor Relations Board* v. *Highland Park Mfg. Co.*, 110 F. (2d) 632, 639 (C. C. A. 4th); *National Labor Relations Board* v. *Sunshine Mining Co.*, 110 F. (2d) 780, 793 (C. C. A. 9th). *Contra: M. H. Ritzwoller Co.* v. *National Labor Relations Board*, 114 F. (2d) 432 (C. C. A. 7th). We submit that the Board was well within the confines of its power when it determined that this affirmative relief was likewise appropriate in the present case.

III

THE ORDER REQUIRING PETITIONER TO DISESTABLISH THE ASSOCIATION IS VALID

Petitioner contends that the order (R. 229) requiring it to withdraw all recognition from, and to disestablish, the Association as the representative of any of the employees is supererogatory for the reason that "continued recognition of the Union is the equivalent of nonrecognition of the Association" (Br. 11, 65–66; Pet. 3). The argument completely mistakes the basis and function of the order.

Such an order is appropriate where the Board may reasonably find that it is necessary to remove an obstacle to the employees' free exercise of the

rights of self-organization and collective bargaining.[64] Its objective of "wiping the slate clean," *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241, 250, is accomplished by making known to the employees that the company union is permanently barred "from consideration as an employees' representative." *National Labor Relations Board* v. *Falk Corp.*, 308 U. S. 453, 461–462. Petitioner's so-called "nonrecognition" of the Association, while negotiating with the Union, is plainly insufficient to achieve these legitimate ends of the disestablishment order.[65]

Petitioner's conduct, as the Board (R. 226–227) and the court below found (R. 1147–1148), has far from equalled an unequivocal announcement that the Association is permanently disqualified from representing employees. Quite to the contrary, petitioner has continued to recognize the Association as a potential representative of employees, qualified under Sections 9 (a) and 8 (5) to demand recognition as the exclusive representative, if des-

[64] *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 270; *National Labor Relations Board* v. *Pacific Greyhound Lines*, 303 U. S. 272, 275.

[65] Such "non-recognition" is even less effective, in dissipating the effects of employer interference and support, than were the notices, as modified by the Circuit Court of Appeals in the *Falk* case, which this Court criticized as permitting the impression that "while in terms disestablished for the time being [the company union] was still available for selection by the employees" (308 U. S. at 462).

ignated by a majority, of the employees.[66] Petitioner's refusal to name the Union as the representative which negotiated the bulletin board "agreement" was defended on the ground that such action might impair the Association's efforts to achieve majority designation and exclusive recognition (pp. 41–42, *supra*). Riley testified that petitioner, since it had two "fairly evenly divided" groups of employees, was obligated to protect "the rights of the minority" by remaining neutral in the "age-old struggle for power" and by avoiding any action which might cause the Association "to quit" (R. 1106–1107). Petitioner, in truth, sought to avoid any action having the incidental effect of discouraging the efforts of the Association to supplant the Union (R. 1107). Petitioner's reasons for refusing a signed agreement

[66] The court below stated, in overruling petitioner's opposition to enforcement of the disestablishment order (R. 1147–1148):

"The record supports the Board's view that disestablishment of the Association is necessary to assure petitioner's employees that they are free to exercise the rights guaranteed to them by § 7. We doubt if any employee would infer from mere negotiation with the Union, pursuant to preelection promise and the mandate of the Act, that petitioner's favor had been withdrawn from the Association. As long as employees may reasonably entertain a belief that petitioner's favor can be won by abandoning the Union for the Association, they will not be free to exercise the rights guaranteed to them by § 7. If the Board has reasonable ground to believe that such a situation exists, it may direct the employer to employ whatever means it regards as reasonable to

plainly had roots in the same soil. And, as a ground for its elimination of all details of the grievance machinery from the "agreement," petitioner stated that it would be unfair "to the minority party among the employees" to intimate that "these 800 men who belong to the Association * * * could do anything through the Union grievance committee" (R. 610–612). The members of the Association, moreover, continued to meet and pay dues and, at the time of the hearing, regarded the Association as a labor organization qualified to represent employees (R. 72–74, 907–908, 965, 978, 1018). The Association's president testified that while his organization was not the authorized collective bargaining representative "at the present moment," as to the future "you can never tell" (R. 976–977). And the Association, during petitioner's negotiations with the Union, sought to weaken the Union's position as the employees' representative by circulating rumors "that the company never intended to come to any agreement" with the Union and that bargaining through the Union was therefore futile (R. 613, 589). To these rumors was

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bring home to the employees that, as far as their employer is concerned, they are entirely free to exercise all the rights guaranteed in § 7. The fact that even here petitioner seeks to justify its refusal to enter into a written contract, in part, upon the ground that a large proportion of its employees voted for the Association, indicates that it still accords the Association recognition in violation of the Act and shows that the Board did not abuse its discretion in directing the disestablishment of the Association."

added the weight due to petitioner's known favor for the Association, to its unwillingness at any stage of the negotiations to injure the Association's cause, through extending complete recognition to the Union (*supra,* pp. 40, 43), and to the fact that, if another strike occurred, the Association still remained available as a strike-breaking agency (*supra,* pp. 23, 34). Finally, in its brief in this Court, continuing to deny its responsibility for the activities of its supervisors, dominating and interfering with the Association (Br. 65–69, 90), petitioner discloses that it still recognizes the Association as fully qualified to represent its employees in all matters except those assigned exclusively to the representative of the majority.

The employees certainly have ample grounds for believing that petitioner's relations with the Association have merely been suspended. The Board was therefore warranted in finding that it was necessary for petitioner to announce unequivocally that its candidate was permanently outside the field of selection. *National Labor Relations Board* v. *Falk Corp., supra.*[67]

[67] Petitioner's contention (Br. 65) that it cannot "withdraw all recognition from the Heinz Employees' Association as the representative of any of its employees," as the order requires (R. 229), because "there is no showing that petitioner has been or now is recognizing the Association as the representative of its employees," is merely a play on words. As petitioner must have known from the Board's findings (R. 226–227), the phrase "all recognition * * * as the representative of any of its employees" in the Board's order

CONCLUSION

It is respectfully submitted that, for the foregoing reasons, the provisions of the Board's order challenged by petitioner are valid and that the decree below should be affirmed.

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DECEMBER 1940.

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comprehends more than the exclusive representation and recognition provided by Sections 9 (a) and 8 (5). The order refers to "*any* employees," not to "*all* employees." It requires the withdrawal of all overt cognizance by petitioner of the Association's existence as a present or potential representative of employees. Petitioner has continued to recognize the Association's existence as a labor organization, whose purposes are the usual purposes of labor organizations and which may compete with other such organizations for the allegiance of employees and for designation as their representative. The order requires petitioner to announce that it no longer regards the Association as an agency for collective bargaining.

APPENDICES

A. *Authoritative studies recognizing that signed agreements were accorded general acceptance:*

The testimony on this point, introduced at the hearing by the Board, was substantiated by reference to a host of authoritative studies (See R. 648–690). It was shown, e. g., that on June 30, 1936, there were on file with the Railway Mediation Board, 3,485 signed trade agreements covering 909,249 employees of Class A railroads in this country and that various trade unions in important American industries have entered into large numbers of such agreements with employers (R. 675–676). In its *First Annual Report* (1935) the Railway Mediation Board said (at p. 36): "Since the enactment of the Railway Labor Act of 1926, it has become the established policy of practically all railroads to enter into such contracts with their employees." Board Exhibits 29, 31A through 31G, and 32 deal with the extent of signed agreements in various important industries in the United States. Concerning the growth and present extent of signed trade agreements generally, see National Labor Relations Board, Division of Economic Research Bull. No. 4, *Written Trade Agreements in Collective Bargaining* (1940) pp. 213–236, 49–209, U. S. Department of Labor, Bureau of Labor Statistics, *Five Years of Collective Bargaining* (1937), pp. 5–7; Saposs and Gamm, *Rapid Increase in Contracts,* 4 Labor Relations Reporter No. 15, p. 6.

B. *Employer organizations acknowledging the signed agreement as the normal medium for the collective compact:*

"Once an agreement has been reached, whether by trading upon the part of the employer, down by the union (sic), or a combination of both, the employer has no logical reason for refusing to sign a written contract. The only interpretation the union can place on the employer's refusal to adhere to a long established business custom is that he intends to violate his word unless he is legally obligated to observe it." Paul Mooney, *Collective Bargaining* (1935), pp. 13–14, published under auspices of American Management Association. The National Industrial Conference Board, the leading research agency for employers' associations in the United States, prints, as an aid to its subscribers, a form of written collective agreement which provides space for signatures of the employer and the employees' representative. This organization also notes that improvement in the form of signed trade agreements implies that "collective bargaining has progressed beyond the preliminary stage of instinctive combativeness" and indicates "a more serious acceptance of collective bargaining * * *." National Industrial Conference Board, Management Record (July 1939), *A Comparison of Union Agreements.*

C. *Authorities recognizing the refusal to enter into a signed agreement as a subterfuge to avoid collective bargaining:*

"One of the subterfuges of certain antiunion employers had been a refusal to sign a trade agreement or union contract. Some employers would meet and bargain with union leaders and come to general understandings, but would refuse to incorporate them in bilateral written agreements; a few employers would go so far as to write out the terms and post them on bulletin boards as unilateral 'statements of company policy,' signed only by the management. * * * such tactics provided obvious evidence of incomplete recognition and bad faith * * *." Carroll R. Daugherty, *Labor Problems in American Industry* (Rev. ed., 1938), pp. 936–937. Compare the increased refusal to sign agreements during periods when, through concerted "open shop" drives, industry was attempting to destroy the organization of labor. Commons and Associates, *History of Labor in the United States* (1926), vol. II, pp. 526, 882–883. Concerning the practice of employers who met and discussed differences with the representatives of their employees under the compulsion of Section 7 (a) of the National Industrial Recovery Act, but refused to embody the terms agreed upon in a signed trade agreement, publishing the terms, instead, through the medium of a unilateral bulletin board statement, one authority has said: "It is evident that this procedure is not collective bargaining," Twentieth Century Fund, Inc., *Labor and the Government* (1935), p. 339. See, also, Massachusetts

Bureau of Statistics, *Annual Report, 1912, Part III, Collective Agreements between Employers and Labor Organizations, 1911* (1912), p. 120. The basis of the attitude behind insistence upon unilateral statements of policy where "outside" unions were concerned, was further emphasized by the almost uniform willingness to conclude signed agreements with "inside" organizations (R. 680, 678).

D. Authorities defining "collective bargaining" as comprehending a willingness and obligation to embody agreed terms in a signed trade agreement:

The Board's expert witness testified, without contradiction, that in the terminology accepted in the field, the term "agreement," unless expressly qualified, referred to a written, signed trade agreement (R. 670). See, also, Dale Yoder, *Labor Economics and Labor Problems* (1933), pp. 439, 443–447; Sumner H. Slichter, *Modern Economic Society* (1931), p. 37. Compare, also, the view that an oral agreement "is so vague, indefinite and especially so difficult of interpretation in case of dispute that it is better to consider it as a quasi-agreement, one in process of development from a crude form of collective bargaining to a real trade agreement." George G. Groat, *Organized Labor in America* (2d ed., 1926), p. 338; "* * * a collective agreement is not valid unless drawn up in writing." International Labour Office, Geneva, *Collective Agreements* (1936), p. 61. The following quota-

tions, viewed in the light of this background, fully supports the statement in the text:

"Collective bargaining may be defined as the process by which the general labor contract itself is agreed upon by negotiation directly between employers, or employers' associations, and organized workingmen." *Final Report* of the *United States Industrial Commission* (1902), vol. XIX, p. 834.

"The natural product of collective bargaining is the collective or trade agreement. * * * it is * * * the culmination of the collective bargaining process." Dale Yoder, *Labor Economics and Labor Problems* (1903), p. 439.

"*Collective bargaining.*—The negotiation of a trade agreement between one or more employers and one or more groups of employees acting collectively through representatives chosen by the respective parties." Harvard University, Bureau of Industrial Research, Bulletin No. 25, *Labor Terminology* (1921), p. 17.

"The process of collective bargaining results * * * in a trade agreement," Walton H. Hamilton, Collective Bargaining in *Encyclopedia of the Social Sciences* (1926), vol. III, pp. 629–630.

"Real collective bargaining * * * requires getting together in a joint conference and, through representatives, making a *trade agreement* binding on individuals on both sides." John R. Commons and John B. Andrews, *Principles of Labor Legislation* (Rev. ed., 1927), p. 129.

"If collective bargaining assumes organization on both sides, it also assumes that the bargain ultimately agreed upon will be embodied in writing, analogous in form to contracts, which both parties are pledged to keep in good faith." Martin G. Glaeser, *Outlines of Public Utility Economics* (1927), pp. 522–523.

"* * * Collective bargaining presupposes the acceptance of agreements and contracts that are determined through agents of the group. * * *" Gordon S. Watkins, *Labor Problems* (Rev. ed., 1929), p. 410.

"Collective bargaining is the working rules of trade agreements." John R. Commons, *Institutional Economics* (1934), p. 758.

"Another defect of bargaining under company unionism is that it ordinarily does not lead to signed agreements for fixed periods of time, as does collective bargaining under trade unionism." Twentieth Century Fund, Inc., *Labor and the Government* (1935), pp. 329–380.

"Every step in the process from the joining of a union to the signing of a trade agreement * * *," Hugh A. Donahoe, *Collective Bargaining Under the National Labor Relations Act* (1935), p. xi.

"Collective bargaining, if successful, generally results in the adoption of a trade agreement signed by both employers and employees." Edward Berman, in *Economic Principles and Problems* (1936), vol. II, p. 286.

"* * * Collective bargaining exists in an industry when its organized employees through their own selected agents make an agreement with the employer which is binding upon both parties. Such trade agreements ordinarily include stipulations concerning wages, hours, and conditions of work * * *." William H. Kiekhofer, *Economic Principles, Problems, and Policies* (1936), pp. 153–154, 229.

"If there is real collective bargaining, there should be written agreements embodying the results * * *." William M. Leiserson, *The Effect of New Deal Legislation upon Industrial Relations,* in American Economic Review Supplement (March 1936), p. 293.

"* * * Let us look at this word bargaining; see what it actually means. It is the process of adjusting attitudes, preliminary to the making of a contract. * * * Bargaining is the process of getting people's minds ready for contracts by persuasion or other means." Earl Dean Howard, *Collective Bargaining and Private Enterprise,* in *Addresses on Industrial Relations,* Bureau of Industrial Relations, University of Michigan (1937), p. 40.

"* * * collective bargaining through trade-union agreements has grown to the point where it has now become the accepted procedure in establishing wages, hours, and working conditions in a considerable part of the American industry." U.

S. Department of Labor, Bureau of Labor Statistics, *Five Years of Collective Bargaining* (1937), p. 7.

"* * * collective agreements * * * represent normally the conclusion of the bargaining process." Bureau of National Affairs, Inc., *Labor Relations Reference Manual* (1938), vol. I–A, p. 779.

"* * * It is impossible to discuss collective bargaining without referring to trade agreements, and *vice versa*. These contracts exist wherever employers recognize and bargain with unions." Carroll R. Daugherty, *Labor Problems in American Industry* (Rev. ed., 1938), p. 454.

See, also, the further authorities cited in National Labor Relations Board, Division of Economic Research, Bull. No. 4, *Written Trade Agreements in Collective Bargaining* (1939), pp. 15–16.

E. *Authorities recognizing the signed trade agreement as the foremost instrumentality for industrial peace.*

"The hope of future peace in the industrial world lies in the trade agreement." Mitchell, *Organized Labor* (1903), p. 347.

"Trade agreements have done more to * * * minimize strikes than any other single instrumentality." Ethelbert Stewart, *Trade Agreements*, in *Annals of the American Academy of Political and Social Science* (Sept. 1910), pp. 321–330.

"The trade agreement * * * seeks to eliminate possible points of dispute. While a comprehensive trade agreement will provide methods of settling differences, this is secondary in importance. Primarily it assumes that normally there will be no need for them. It arranges working relations instead of fighting relations * * *. On the whole, the evidence seems conclusive that where the trade agreement is developed on conservative lines and entered into in good faith by both parties, it acts decisively as a steadying influence." George G. Groat, *An Introduction to the Study of Organized Labor in America* (2d ed., 1926), pp. 337–339, 341, 345, 346.

"The most important agency for maintaining industrial peace that is now available and that can be adapted to our present wage system is the *trade agreement.*" Richard T. Ely, *Outlines of Economics* (5th rev. ed., 1930), p. 712.

"The popularity and strength of trade agreements as a form of industrial government are attributable to their attempts to adjust differences peacefully rather than by resorting to force, to their frank recognition of both a conflict and a harmony of interests in industry, and to the fact that for their successful negotiation both employers and organized labor are directly responsible." William H. Kiekhofer, *Economic Principles, Problems, and Policies* (1936), pp. 153–154, 229.

See also, Bye and Hewett, *Applied Economics* (1928), pp. 154–155; Ira B. Cross, *Collective Bar-*

gaining and Trade Agreements in the Brewery Metal, Teaming and Building Trades of San Francisco, California (1918), pp. 343–346; Solomon Blum, Labor Economics (1926), pp. 374–375; William M. Leiserson, *Right and Wrong in Labor Relations* (1938), pp. 72–73.

F. *The relevant provisions of the National Labor Relations Act* (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C. Supp. V, Title 29, Sec. 151, *et seq.*):

> SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.
>
> The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership

association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: * * *

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

* * * * *

SEC. 9 (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

* * * * *

SEC. 10 (c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

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SUPREME COURT OF THE UNITED STATES.

No. 73.—October Term, 1940.

H. J. Heinz Company, Petitioner, vs. National Labor Relations Board. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[January 6, 1941.]

Mr. Justice Stone delivered the opinion of the Court.

Three questions are presented by the petition for certiorari in this case.

First. Whether there is support in the evidence for the finding of the National Labor Relations Board that petitioner has been guilty of the unfair labor practices defined by § 8(1) and (2) of the Act, interference with the exercise by its employees of their rights of self-organization guaranteed by § 7 of the Act, and more particularly interference with the formation and organization of a labor union of its employees.

Second. Whether the National Labor Relations Board exceeded its authority in ordering the disestablishment of a labor union in whose organization petitioner had interfered, and

Third. Whether the Board could validly find that petitioner's refusal to join with representatives of the labor organization authorized to represent its employees in collective bargaining, in signing a written contract embodying the terms of their agreement concerning wages, hours and working conditions, constituted a refusal to bargain collectively in violation of § 8(5) of the Act, and whether the Board exceeded its authority in ordering petitioner to join in signing the agreement.

This is a proceeding brought by the National Labor Relations Board in the Court of Appeals for the Sixth Circuit to enforce the Board's order directing petitioner to cease certain unfair labor practices in which it found that petitioner had engaged, in connection with the organization of the Heinz Employees Association, a plant labor organization of petitioner's employees; to disestablish

the Association; to recognize and bargain collectively with the Canning and Pickle Workers Local, Union No. 325, a labor organization affiliated with the American Federation of Labor; and to sign a written contract embodying any agreement which petitioner and the Union may reach respecting wages, hours and working conditions of petitioner's employees. The court of appeals confirmed the findings of the Board and directed compliance with the Board's order without modification. 110 F. (2d) 843. We granted certiorari, 310 U. S. 621, the questions raised by the petition being of public importance in the administration of the National Labor Relations Act.

The Board found that during April and May, 1937, the two rival labor organizations, the Association and the Union, sought to organize petitioner's employees at its Pittsburgh plant. Petitioner's proposal that an election be held to determine which organization represented a majority of its employees was rejected by the Union which called a strike on May 24, 1937. The strike was ultimately settled by a written contract signed by petitioner, the Union, and the Association, which provided for an election, by the employees, under the supervision of a regional director of the National Labor Relations Board for the choice of an organization to represent them in collective bargaining. Meanwhile, and before the election, a majority of petitioner's two thousand employees at the Pittsburgh plant had signed petitions for membership in the Association, but upon the election held June 8, 1937, a majority of the employees cast their ballots for the Union. Petitioner has since recognized and bargained with the Union, but has refused to embody its agreement with the Union in a written contract.

Before the election the Union had lodged a complaint with the Board concerning the participation by petitioner in the attempted organization of the Association by petitioner's employees. The Board found that petitioner had been guilty of unfair labor practices by interfering in the organization of the Association, contrary to the Act. It found in detail that petitioner, through superintendent, foremen and other supervising employees, had interfered with, restrained and coerced its employees in the exercise of their rights to organize in violation of §§ 7, 8(1) of the Act; that it had dominated and interfered with the formation of the Association and contributed to its support within the meaning of § 8(2), and that it had refused to sign an agreement with the Union. On the basis of these and subsidiary findings which need not now be stated, the

Board made its order, the terms of which so far as now relevant have already been set forth.

Petitioner's Responsibility for Unfair Labor Practices. It is unnecessary to make a detailed examination of the evidence supporting the Board's findings respecting unfair labor practices both because the court below, after a thorough examination of the record has confirmed the Board's findings, and because of the nature of petitioner's contention with respect to them. Petitioner does not deny that there is evidence supporting the findings that petitioner's superintendent, during the organization campaign, upbraided employees for attending Union meetings, threatened one with discharge if he joined the Union, spoke to them disparagingly of the Union and directed some of petitioner's foremen to enroll the employees in the Association; or that there was evidence supporting the finding that a general foreman working throughout petitioner's Pittsburgh plant was active in disparaging the Union and its members to employees, and in urging them to repudiate the Union organization, or that three other foremen in charge of particular buildings or departments were active in dissuading employees from joining the Union. All three spoke disparagingly of the Union, one at a meeting of employees which he had called; and two were active in questioning employees concerning their labor union sympathies. Two of them threatened employees with discharge or loss of work or privileges if the Union were recognized.

There was also evidence that other foremen or forewomen in charge of large groups of employees engaged in similar activities; and that some solicited employees to join the Association; that one of the three foremen induced an employee to solicit signatures to the Association petition during working hours without loss of pay, and suggested the names of other employees to aid in this work. There was also evidence that leaders or supervisors of employee groups were allowed to go about the plant freely during working hours and without loss of pay to solicit memberships in the Association which was done in the presence of the foremen.

Petitioner does not seriously dispute this evidence or challenge the findings of the Board summarizing it. The contention is that the activities of these supervisors of employees are not shown to have been authorized or ratified by petitioner; that following a complaint by a representative of the Union, about May 1st, one of

petitioner's officers instructed the superintendent that the employees had a right to organize and that he wished the supervising force to understand that they should not be interfered with in any way in organizing, and that on May 21st the officer in question called a meeting of the supervisory force at which he gave like instructions; that there is no evidence of like activities after this time and that since the election petitioner has consistently recognized and bargained with the Union. From all this petitioner concludes that it is not chargeable with any responsibility for the acts of its supervisory employees and that consequently the evidence does not support the findings of unfair labor practices on its part, or justify the Board's order prohibiting petitioner, its officers and agents from interfering with the administration of the Association or contributing to its support.

Notwithstanding the knowledge from the start of some of petitioner's officers, of the organization campaign, and notwithstanding the unusual excitement and activity in petitioner's plant attending it, we assume that all were unaware of the activities of its supervisory staff complained of, and did nothing to encourage them before the complaint of their activities made by a representative of the Union about May 1st. At that time the campaign for membership in the rival unions was at its height and resulted, as announced some three or four weeks later, in a majority of petitioner's employees signing as members of the Association.

It is conceded that petitioner's superintendent and foremen have authority to recommend the employment and discharge of workmen. It is in evidence that they can recommend wage increases and that the group leaders also issued orders directing and controlling the employees and their work, with authority to recommend their discharge. There is evidence supporting the Board's conclusion that the employees regarded the foremen and the group leaders as representatives of the petitioner and that a number of employees signed as members of the Association only because of the fear of loss of their jobs or of discrimination by the employer induced by the activities of the foremen and group leaders.

We do not doubt that the Board could have found these activities to be unfair labor practices within the meaning of the Act if countenanced by petitioner, and we think that to the extent that petitioner may seek or be in a position to secure any advantage from

these practices they are not any the less within the condemnation of the Act because petitioner did not authorize or direct them. In a like situation we have recently held that the employer, whose supervising employees had, without his authority, so far as appeared, so participated in the organization activities of his employees as to prejudice their rights of self-organization, could not resist the Board's order appropriately designed to preclude him from gaining any advantage through recognizing or bargaining with a labor organization resulting from such activities. *International Association of Machinists* v. *National Labor Relations Board,* No. 16, decided November 12, 1940. See *National Labor Relations Board* v. *Link-Belt Co.*, Nos. 235, 236, decided this day.

The question is not one of legal liability of the employer in damages or for penalties on principles of agency or *respondeat superior,* but only whether the Act condemns such activities as unfair labor practices so far as the employer may gain from them any advantage in the bargaining process of a kind which the Act proscribes. To that extent we hold that the employer is within the reach of the Board's order to prevent any repetition of such activities and to remove the consequences of them upon the employees' right of self-organization, quite as much as if he had directed them.

This is the more so here where petitioner, when advised of the participation of his supervising employees in the organization campaign, took no step, so far as appears, to notify the employees that those activities were unauthorized, or to correct the impression of the employees that support of the Union was not favored by petitioner and would result in reprisals. From that time on the Board could have found that petitioner was as responsible for the effect of the activities of its foremen and group leaders upon the organization of the Association as if it had directed them in advance. The Board could have concluded that this effect was substantial, for it was in the succeeding three weeks that more than one-half of the majority of petitioner's employees who joined the Association signed their petitions for membership. We think there was adequate basis for the Board's order prohibiting petitioner, its officers and agents, from interfering with the exercise of its employees' rights of self-organization or with the administration of the Association or contributing to its support.

The Order Disestablishing the Association. What we have said of the unfair labor practices found by the Board, when considered with its unchallenged findings as to the relations of petitioner to the two unions, affords the answer to petitioner's contention that the Board was without authority to compel disestablishment of the Association. Disestablishment is a remedial measure under §10(c) to be employed by the Board in its discretion to remove the obstacle to the employees' right of self-organization, resulting from the continued or renewed recognition of a union whose organization has been influenced by unfair labor practices. Whether this recognition is such an obstacle is an inference of fact to be drawn by the Board from all the circumstances attending those practices. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines,* 303 U. S. 261; *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.,* 308 U. S. 241, 250.

Petitioner argues that as it has now recognized the Union and bargains with it, it should be equally free to recognize the Association instead of the Union whenever the former represents a majority of the employees. But in weighing this contention the Board could consider, as it did, that petitioner had failed to notify its employees that it repudiated the participation of its supervising employees in the organization of the Association and so has not removed the belief of the employees that petitioner favored and would continue to favor the Association and the employees joining it over others; that it had not mentioned the name of the Union in its bulletins announcing the terms of its agreement with the Union, and although it had reached an agreement with the Union had persistently refused to sign any written contract with it.

From this and other circumstances disclosed by the evidence, the Board inferred, as it might, that the influence of the participation of petitioner's employees in the organization of the Association had not been removed and that there was danger that petitioner would seek to take advantage of such continuing influence to renew its recognition of the Association and control its action. This we think afforded adequate basis for the Board's order. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, supra; National Labor Relations Board* v. *Falk Corp.,* 308 U. S. 453, 461, 462; *Nation Labor Relations Board* v. *Link-Belt Co., supra.* Nothing in the

order precludes members of the Association from establishing an organization independently of participation by petitioner and its officers and agents, and from securing recognition through certification of the Board or an election as provided by §9(c) of the Act.

The Employer's Refusal to Sign a Written Agreement. It is conceded that although petitioner has reached an agreement with the Union concerning wages, hours and working conditions of the employees, it has nevertheless refused to sign any contract embodying the terms of the agreement. The Board supports its order directing petitioner, on request of the Union, to sign a written contract embodying the terms agreed upon on the ground, among others, that a refusal to sign is a refusal to bargain within the meaning of the Act.

In support of this contention it points to the history of the collective bargaining process showing that its object has long been an agreement between employer and employees as to wages, hours and working conditions evidenced by a signed contract or statement in writing, which serves both as recognition of the union with which the agreement is reached and as a permanent memorial of its terms.[1] This experience has shown that refusal to sign a written contract has been a not infrequent means of frustrating the bargaining process through the refusal to recognize the labor organization as a party to it and the refusal to provide an authentic record of its terms which could be exhibited to employees, as evidence of the good faith of the employer. Such refusals have proved fruitful sources of dissatisfaction and disagreement.[2] Contrasted with the unilateral statement by the employer of his labor policy, the signed agreement has been regarded as the effective instrument of stabilizing labor

[1] Lewis L. Lorwin, The American Federation of Labor, p. 309; Commons and Associates, History of Labor in the United States, vol. II, pp. 179-181, 423-424, 480; Perlman and Taft, History of Labor in the United States, 1896-1932, vol. IV, pp. 9-10; Paul Mooney, Collective Bargaining, pp. 13-14; Twentieth Century Fund, Inc., Labor and the Government, p. 339.

Concerning the growth and extent of signed trade agreements, see National Labor Relations Board, Division of Economic Research Bull. No. 4, Written Trade Agreements in Collective Bargaining, pp. 213-236, 49-209; U. S. Dept. of Labor, Bureau of Labor Statistics, Five Years of Collective Bargaining, pp. 5-7; Saposs and Gamm, Rapid Increase in Contracts, 4 Labor Relations Reporter No. 15, p. 6.

[2] Sumner H. Slichter, Annals of the American Academy (March, 1935), pp. 110-120; R. R. R. Brooks, When Labor Organizes, p. 221. Cf. Matter of Inland Steel Co., 9 N. L. R. B. 783, 796-797.

relations and preventing, through collective bargaining, strikes and industrial strife.[3]

Before the enactment of the National Labor Relations Act it had been the settled practice of the administrative agencies dealing with labor relations to treat the signing of a written contract embodying a wage and hour agreement as the final step in the bargaining process.[4] Congress, in enacting the National Labor Relations Act, had before it the record of this experience, H. Rept. No. 1147, 71st Cong., 1st Sess., p. 5, and see also pp. 3, 7, 15-18, 20-22, 24; S. Rept. No. 573, 74th Cong., 1st Sess., pp. 2, 8, 9, 13, 15, 17. The House Committee recommended the legislation as "an amplification and clarification of the principles enacted into law by the Railway Labor Act and by § 7(a) of the National Industrial Recovery Act." H. Rept. 1147, *supra*, p. 3 and stated, page 7, that §§ 7 and 8 of the Act guaranteeing collective bargaining to employees was a reenactment of the like provision of § 7(a) of the National Industrial Recovery Act, see *Consolidated Edison Co.* v. *Labor Board*, 305 U. S. 197, 236; *Labor Board* v. *Sands Mfg. Co.*, 306 U. S. 332, 342.

We think that Congress, in thus incorporating in the new legislation the collective bargaining requirement of the earlier statutes included as a part of it, the signed agreement long recognized under the earlier acts as the final step in the bargaining process. It is true that the National Labor Relations Act, while requiring the employer to bargain collectively, does not compel him to enter into

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[3] Carroll R. Daugherty, Labor Problems in American Industry (Rev. ed. 1938), pp. 936-937; Mitchell, Organized Labor, p. 347; George G. Groat, An Introduction to the Study of Organized Labor in America (2d ed. 1926), pp. 337-339, 341, 345, 346; First Annual Report, National Mediation Board, pp. 1-2.

[4] The National Mediation Board administering the Railway Labor Act of 1926, as amended in 1934, 44 Stat. 577, 48 Stat. 926, 1184, interpreted that Act which imposed a duty "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions . . . ", to require signed contracts. See First Annual Report, National Mediation Board (1935), pp. 1-2, 36.

The National Labor Board, created to administer Section 7(a) of the National Industrial Recovery Act, 48 Stat. 195, held that the duty to bargain collectively imposed by that section included an obligation to embody agreed terms in a signed trade agreement. See, Matter of Harriman Hosiery Mills, 1 N. L. B. 68; Matter of Pierson Mfg. Co., 1 N. L. B. 53; Matter of National Aniline & Chemical Co., 2 N. L. B. 38; Matter of Connecticut Coke Co., 2 N. L. B. 88. See, also, Matter of Whittier Mills Co., Textile Labor Relations Board, Case No. 34. Its successor, the first National Labor Relations Board did likewise. See, Matter of Houde Engineering Co., 1 N. L. R. B. (old) 35; Matter of Denver Towel Supply Co., 2 N. L. R. B. (old) 221; Matter of Colt's Patent Fire Arms Co., 2 N. L. R. B. (old) 135.

an agreement. But it does not follow, as petitioner argues, that, having reached an agreement, he can refuse to sign it, because he has never agreed to sign one. He may never have agreed to bargain but the statute requires him to do so. To that extent his freedom is restricted in order to secure the legislative objective of collective bargaining as the means of curtailing labor disputes affecting interstate commerce. The freedom of the employer to refuse to make an agreement relates to its terms in matters of substance and not, once it is reached, to its expression in a signed contract, the absence of which, as experience has shown, tends to frustrate the end sought by the requirement for collective bargaining. A business man who entered into negotiations with another for an agreement having numerous provisions, with the reservation that he would not reduce it to writing or sign it, could hardly be thought to have bargained in good faith. This is even more so in the case of an employer who, by his refusal to honor, with his signature, the agreement which he has made with a labor organization, discredits the organization, impairs the bargaining process and tends to frustrate the aim of the statute to secure industrial peace through collective bargaining.

Petitioner's refusal to sign was a refusal to bargain collectively and an unfair labor practice defined by § 8(5). The Board's order requiring petitioner at the request of the Union to sign a written contract embodying agreed terms is authorized by § 10(c). This is the conclusion which has been reached by five of the six courts of appeals which have passed upon the question.[5]

Affirmed.

Mr. Justice McReynolds took no part in the consideration or decision of this case.

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[5] Bethlehem Shipbuilding Corp. *v.* National Labor Relations Board, 114 F. (2d) 930 (C. C. A. 1st); Art Metals Construction Co. *v.* National Labor Relations Board, 110 F. (2d) 148 (C. C. A. 2d); National Labor Relations Board *v.* Highland Park Mfg. Co., 110 F. (2d) 632 (C. C. A. 4th); Wilson & Co., Inc. *v.* National Labor Relations Board, decided December 2, 1940 (C. C. A. 8th); Continental Oil Co. *v.* National Labor Relations Board, 113 F. (2d) 473 (C. C. A. 10th). *Contra*, Inland Steel Co. *v.* National Labor Relations Board, 109 F. (2d) 9 (C. C. A. 7th); Fort Wayne Corrugated Paper Co. *v.* National Labor Relations Board, 111 F. (2d) 869 (C. C. A. 7th).